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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg
Debtors.

- - - - -x

RESCAP LIQUIDATING TRUST,
Plaintiff,

- against - Adv. No. 14-02004-mg

MORTGAGE INVESTORS GROUP, INC., et al.,
Defendants.

- - - - -x

ALLY FINANCIAL, INC.,
Plaintiff,

- against - Adv. No. 14-02435-mg

WELLS FARGO BANK, N.A.,
Defendant.

- - - - -x

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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February 25, 2015

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10:04 AM

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B E F O R E:

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HON. MARTIN GLENN

23

U.S. BANKRUPTCY JUDGE

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1
2 Objection of the ResCap Borrower Claims Trust to Proof of Claim
3 Filed by Francine Silver (Claim No. 61) [Docket No. 8019]
4

5 The ResCap Borrower Claims Trust's Objection to Claim Number
6 2267 Filed by Abosede Eboweme [Docket No. 8018]
7

8 ResCap Liquidating Trust's Eighty-First Omnibus Objection to
9 Claims ((A) Duplicate Claim; (B) Insufficient Documentation
10 Claims; (C) No Liability Claims; (D) Redesignate and Allow
11 Claim; and (E) Reduce and Allow Claims) [Docket No. 8013]
12

13 ResCap Borrower Claims Trust's Objection to Claim No. 4222
14 Filed by Todd Silber [Docket No. 7979]
15

16 Letter dated February 5, 2015 to Judge Glenn from Jordan A.
17 Wishnew regarding Settlement of Claim No. 5286 Filed by Ailette
18 Cornelius [Not Docketed]
19

20 Adversary Proceeding 14-02004 Ally Financial, Inc. v. Wells
21 Fargo Bank, N.A.
22 Pre-Trial Conference
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2 Adversary Proceeding 14-02435 ResCap Liquidating Trust v.

3 Mortgage Investors Group, Inc., et al.

4 Pre-Trial Conference

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KATHY PRIORE, ResCap Liquidating Trust

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. All right,
3 we're here in Residential Capital, number 12-12020. What we're
4 going to do first is take the status conferences in two of the
5 adversary proceedings.

6 First is 14-02435, Ally Financial v. Wells Fargo Bank.
7 Can I have appearances, please?

8 MR. POLLARD: Good morning, Your Honor. William
9 Pollard, Kornstein Veisz Wexler & Pollard, for Ally Financial.

10 THE COURT: Thank you.

11 MR. KAPLAN: Jacob Kaplan of Baker & McKenzie for
12 Wells Fargo.

13 THE COURT: Thank you.

14 Go ahead, Mr. Pollard.

15 MR. POLLARD: Your Honor, first I'd like to tell the
16 Court the nature of the dispute that brings us here today.

17 THE COURT: I've read the complaint.

18 MR. POLLARD: All right. Well, fine. The issues,
19 then, Your Honor, you know, is that there is an amendment to
20 the depository agreement that Wells Fargo says it could use to
21 take nearly half a million dollars from Ally Financial's
22 account for the legal fees purportedly incurred by Wells Fargo
23 with respect to the ResCap bankruptcy.

24 Now, as Your Honor I'm sure will remember, when James
25 Donnell was here, you on more than one occasion, asked him what

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1 Wells Fargo's interest was in the bankruptcy. And perhaps like
2 you, we're still waiting to figure out what that is. But they
3 took our money, and we want it back.

4 So the dispute revolves over whether or not the
5 amendment to the depository agreement is valid and whether they
6 can take the money that they took.

7 There's a threshold issue, Your Honor, that has to be
8 addressed with respect to the motion to dismiss that Wells
9 Fargo has made. And that is, what law applies to this dispute?

10 The depository agreement says that the law of the
11 state in which the account was opened applies. More than a
12 month ago, I asked Mr. Donnell if he would supply us with the
13 records -- bank's records, so we could see what state law
14 applies. He said he would look into it. A month later, we
15 still don't know what law applies. I have had conversations
16 with Mr. Donnell and his partner, Mr. Kaplan saying will you
17 stipulate to a particular law of a particular jurisdiction to
18 govern the dispute?

19 Now, Mr. Donnell a week or so ago said, we'll
20 stipulate to New York law with respect to motion to dismiss. I
21 said no. We need to know what law controls the dispute. So --

22 THE COURT: But let me ask you this. What states are
23 potentially involved?

24 MR. POLLARD: Well, I don't know, because the
25 agreement says "as shown on the bank's records" where the

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1 account was opened. "As shown on the bank's records where the
2 accounts were opened." Those are the states whose law applies.

3 Now, we know that Wachovia, which was then the bank,
4 was in North Carolina. We know that Ally is in Michigan. We
5 know that some of the transactions involved New York. So
6 those --

7 THE COURT: So that -- but you're telling me some of
8 the transactions involved New York, but you're telling me
9 that's not what the account agreement said as to the
10 controlling law.

11 MR. POLLARD: Well, honestly -- I missed --

12 THE COURT: So my question -- look, I don't know
13 whether it's going to make a difference, because if there's no
14 difference in the law of North Carolina, New York, Michigan, is
15 it going to make a difference?

16 MR. POLLARD: I agree with that, Your Honor, if
17 there's no difference. But here's the problem. Counsel says
18 well, if Ally prevails on this motion, then it has reserved its
19 right to try to figure out what law applies to all these
20 agreements and to then relitigate the whole issue of validity.

21 THE COURT: No, we're only doing it once.

22 MR. POLLARD: That is exactly my point, Your Honor.

23 THE COURT: We're only doing it once.

24 MR. POLLARD: That is exactly my point. And the once
25 has to be throughout the dispute. I cannot be in a position

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1 where I prevail here --

2 THE COURT: Okay. Let me ask you -- let me ask you
3 this, Mr. Pollard.

4 MR. POLLARD: All right.

5 THE COURT: Is there any discovery that you wish to
6 take? First off, let me make clear to both sides, I don't stay
7 discovery because there's a pending motion to dismiss. Okay?
8 I've read the complaint. In reading the complaint, it didn't
9 seem to me that there were going to be disputed issues of fact,
10 but maybe there are. I wasn't aware of your inability to agree
11 on what state's law applies. Perhaps that is going to raise an
12 issue as to which discovery has to be taken.

13 Is there any discovery, Mr. Pollard, that you wish to
14 take?

15 MR. POLLARD: Yes, Your Honor, there is discovery we
16 wish to take.

17 THE COURT: What's the discovery you wish to take?

18 MR. POLLARD: Your Honor, we want to focus on how this
19 amendment came about. That's one of the things we want to
20 focus on. Take --

21 THE COURT: What difference does it make?

22 MR. POLLARD: Because, Your Honor, it goes to good
23 faith. This is a one-off agreement that we think was drafted
24 specifically by Ally -- specifically by Wells Fargo --

25 THE COURT: As a mat -- what's your -- as a matter of

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1 law, does the reason that the amendment came about make a
2 difference?

3 MR. POLLARD: I think so, Your Honor.

4 THE COURT: Okay. From reading your complaint, you
5 allege that Wells Fargo could not unilaterally amend or modify
6 the account agreement.

7 MR. POLLARD: In the way it did; yes.

8 THE COURT: And then you alleged that they gave you
9 insufficient time to close the accounts from when they gave you
10 notice --

11 MR. POLLARD: Yes.

12 THE COURT: -- okay. So if -- the issue whether, as a
13 matter of law, they could unilaterally amend the account
14 agreement, does seem to me to be an issue of law.

15 MR. POLLARD: Well, Judge, it's --

16 THE COURT: What are the facts -- what facts bear on
17 that issue?

18 MR. POLLARD: Judge, it is an issue of law, but the
19 law also tells us the covenant of good-faith --

20 THE COURT: Okay.

21 MR. POLLARD: -- when people make contracts.

22 THE COURT: All right.

23 MR. POLLARD: And here, Your Honor, we believe this is
24 what happened. That as the ResCap entities approached
25 bankruptcy, Wells Fargo and its counsel, then Winston & Strawn,

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1 devised a way to shift the obligation to pay for any legal fees
2 that Wells Fargo legitimately incurred with respect to the
3 bankruptcy onto Ally Financial, because they realized that the
4 ResCap entities would not be able to pay them. And that they
5 then created an amendment that goes far beyond anything having
6 to do with our banking relationship.

7 For example, Your Honor, the amendment says that Wells
8 Fargo now has a security interest in every asset of Ally
9 Financial worldwide. That, Your Honor, has nothing to do with
10 the depository relationship between Ally Financial and Wells
11 Fargo. It imposes this guaranty for third parties on us.

12 We think that this is a factual issue that has to be
13 explored --

14 THE COURT: Okay. What discovery do you wish to take?

15 MR. POLLARD: We wish to take discovery concerning how
16 the amendment came about. We wish to take discovery concerning
17 how these fees relate.

18 THE COURT: Say that again?

19 MR. POLLARD: We wish to take discovery concerning how
20 this amendment came about.

21 THE COURT: That I got. What was the second one?

22 MR. POLLARD: We wish to take discovery concerning the
23 alleged relationship between these fees and the ResCap
24 bankruptcy, because the amendment is limited to fees that have
25 to do with protecting their interest.

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1 We want to take discovery, Your Honor, regarding the
2 reasonableness of the fees. You know, a half a million
3 dollars, almost, for coming down and monitoring and protecting
4 an interest that they can't even articulate existed. These are
5 some of the things we want to take discovery about, Judge.

6 And honestly, the choice of law. And with respect to
7 the choice of law, Judge, we cannot start to prepare our
8 response to the motion to dismiss until we know what law
9 applies. And when we were negotiating the scheduling of the
10 motion, we explicitly said to Mr. Kaplan and Mr. Donnell that,
11 look, these dates are conditioned upon a quick resolution of
12 the choice of law issue.

13 Now, we don't have that resolved. And one of the
14 things, Judge, we need to do, is that to reset our time to
15 respond to a period after we know what law applies. If that
16 means taking discovery on the law from Wells Fargo first --

17 THE COURT: Tell me the -- again, the language of the
18 deposit agreement that relates to the applicable choice of law?

19 MR. POLLARD: Yes, Judge. Just give me one moment,
20 please?

21 THE COURT: Sure.

22 MR. POLLARD: The applicable law is --

23 THE COURT: Tell me where you're reading from?

24 MR. POLLARD: I'm sorry. I'm reading from page 7 of
25 the original -- well, page 7 of the 2010 commercial deposit

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1 agreement. Page 7 section 18, at the bottom of the page 7:
2 "The applicable law is the law of the state in which your
3 account was opened as identified in our records."

4 Now, there are many accounts that are involved here.
5 And one of the issues that --

6 THE COURT: How many accounts?

7 MR. POLLARD: I don't -- I can't tell you off the top
8 of my head, Judge, a number.

9 And one of the issues that we are going to sort out is
10 counsel takes the position that if he prevails on any -- the
11 amendment being valid for any accounts, it's valid for all
12 accounts.

13 THE COURT: Let me ask you this, Mr. Pollard. The
14 500,000, approximately, that was withdrawn from Ally accounts,
15 did it come from one specific account or multiple accounts?
16 You must know that.

17 MR. POLLARD: I believe -- I believe it came from one
18 account but I --

19 THE COURT: Okay. So do I have to deal with any
20 accounts other than the one from which the money was withdrawn?

21 MR. POLLARD: Well, they say that if it comes -- that
22 if any -- if the amendment is effective as to any account, then
23 they can take money from any account.

24 THE COURT: But they took the money from one account?

25 MR. POLLARD: Correct.

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1 THE COURT: You've read from an account agreement.

2 MR. POLLARD: Right.

3 THE COURT: Was it the same account agreement for each
4 account?

5 MR. POLLARD: Yes, and no. It is the -- the agreement
6 is -- the agreement is depository-specific. It covers multiple
7 customers within Ally. But it is --

8 THE COURT: Okay, stop for a second. You're telling
9 me that all of the money was withdrawn from a single account?

10 MR. POLLARD: I believe it --

11 THE COURT: Who was the accountholder for that
12 account?

13 MR. POLLARD: That was -- it was an Ally Financial,
14 Inc. account.

15 THE COURT: Okay. And why -- why is it relevant about
16 any other account other than the one from which the money was
17 withdrawn?

18 MR. POLLARD: Because counsel takes the position that
19 if the depository agreement for that account is invalid, but a
20 depository agreement for another account of Ally Financial is
21 valid, that gives them the right to take money from any Ally
22 account.

23 THE COURT: May I ask you this?

24 MR. POLLARD: Yes, sir.

25 THE COURT: Has Ally closed all of the accounts?

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1 MR. POLLARD: My understanding is all the accounts
2 have been closed.

3 THE COURT: So there's no money for them -- if somehow
4 the Court were to decide that the account from which they took
5 the money, they couldn't do it, they can't grab money from
6 another account because it's not there anymore.

7 MR. POLLARD: But the terms --

8 THE COURT: Why do I have to deal with anything more
9 than the one account from which they withdrew the money?

10 MR. POLLARD: Because if -- because we want the money
11 back that they took.

12 THE COURT: I understand you want the money back.
13 Okay?

14 MR. POLLARD: Their position --

15 THE COURT: They withdrew money from one account. If
16 I determine you're correct as to that account, isn't that the
17 end of the dispute?

18 MR. POLLARD: No. From my perspective, yes, but not
19 from their perspective. Their perspective --

20 THE COURT: Well, I'll --

21 MR. POLLARD: -- as I understand it, is --

22 THE COURT: -- Mr. Kaplan's going to have to tell me
23 why. Because it does seem to me, that if the money was -- if
24 you told me it was withdrawn from ten different accounts, I'd
25 have to look at all ten accounts. But if the money is

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1 withdrawn from one account, you are entitled to know what law
2 do they claim applies to that account.

3 MR. POLLARD: If that's the issue --

4 THE COURT: Okay?

5 MR. POLLARD: -- to litigate, Judge --

6 THE COURT: And we're going to get an answer to that
7 question quickly. All right? And if there's a dispute about
8 it, we'll resolve that issue very quickly. Okay?

9 Where do you believe Ally opened the one account from
10 which the funds were withdrawn?

11 MR. POLLARD: I have --

12 THE COURT: What's your position?

13 MR. POLLARD: I have inquired, and we cannot tell.

14 The reason we cannot tell is very simple, Judge. Wachovia
15 opened these accounts. Yes, we went to Wachovia and we entered
16 into this agreements.

17 THE COURT: In Michigan? Did they have a branch in
18 Michigan?

19 MR. POLLARD: Yes.

20 THE COURT: And is that where Ally -- where were the
21 Wachovia officers with whom Ally financial dealt in opening the
22 account? Have you ascertained that? I would assume --

23 MR. POLLARD: I believe -- again, I believe some --
24 Ms. Gross, who's here with me, corrected me. I believe that
25 the --

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1 THE COURT: Why don't you inquire before you answer
2 that.

3 MR. POLLARD: Okay. I'm told, Judge, we do not know.
4 Wachovia was based in North Carolina.

5 THE COURT: They had branches in Michigan, though?

6 MR. POLLARD: They had -- they -- that's my
7 understanding.

8 Ally acted from Michigan. That I will tell the Court.
9 That's why -- look, Michigan law or North Carolina law may
10 be --

11 THE COURT: Okay, if Michigan law applies, have you
12 looked to see whether Michigan law permits a bank to
13 unilaterally amend a deposit agreement?

14 MR. POLLARD: We have looked at Michigan law, Judge.
15 I believe we have some defenses, but I --

16 THE COURT: You're not answering my question.

17 MR. POLLARD: -- but I have not yet -- I have not
18 completed the research on that, in part, because I don't want
19 to spend my time -- did not want to spend my time
20 researching --

21 THE COURT: What law do you think applies?

22 MR. POLLARD: Frankly, I do not know. That's why I --

23 THE COURT: Come on.

24 MR. POLLARD: -- that's why -- I'm being honest.

25 Judge --

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1 THE COURT: That's unacceptable to me.

2 MR. POLLARD: Judge, but --

3 THE COURT: You filed a -- no, stop. Don't interrupt.

4 You filed a complaint. You say it was improper for
5 them to unilaterally amend or modify the account agreement, and
6 you have no position as to what law applies? Come on. I can't
7 believe that.

8 MR. POLLARD: Judge, look, I think -- New York or
9 Michigan law or North Carolina law should be the law that
10 applies.

11 THE COURT: Okay, and have you looked to see whether
12 the law in those three states, what is the -- what do the --
13 what does the law of those states indicate with respect to a
14 bank unilaterally amending the deposit agreement?

15 MR. POLLARD: I don't think they can amend it in the
16 way that they did to the scope that they did.

17 THE COURT: Under either -- under any of the three
18 states' law.

19 MR. POLLARD: I believe so.

20 THE COURT: You think the law in all three states is
21 the same?

22 MR. POLLARD: I don't know if it's the same. I know
23 that there's some certain differences. But I believe at the
24 end of the day, that Ally will prevail if the law of one of
25 those three states is applied. But, Judge --

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1 THE COURT: Does it matter to you which of those three
2 states' law applies, if it's one of those three?

3 MR. POLLARD: Well, I think not. One of the things
4 that we raised was picking New York law because there is a
5 connection to New York, and everybody in this room is more
6 familiar with New York law than they are the law of Michigan or
7 North Carolina. Counsel --

8 THE COURT: Well, the parties can certainly agree --
9 can stipulate that for purposes of the case -- not for purposes
10 of the motion to dismiss, because it's got to be -- we're not
11 going to do this more than once -- counsel can agree that for
12 purposes of the case, New York law will apply.

13 MR. POLLARD: That's fine. They wanted to stipulate
14 for the purpose of the motion that New York law was applied.
15 And I said no, it has to be for the purposes of the case.
16 So --

17 THE COURT: Yeah, we're not -- we're not switching,
18 okay.

19 MR. POLLARD: Yeah.

20 THE COURT: So if the parties can agree on what state
21 law applies, I'll accept that -- if those three states that you
22 identified each has a connection to the dispute, I believe the
23 parties can select -- agree upon the law that will apply, and
24 the Court will honor that selection. But we're not going to
25 switch as the case goes on.

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1 Mr. Kaplan?

2 MR. KAPLAN: It's not necessarily a matter of
3 switching. It may be that there are multiple -- he's claiming
4 multiple accounts; he's claiming that --

5 THE COURT: Look, you took money from one account, why
6 do the other accounts -- why does anything other than the one
7 account from which you took the money matter?

8 MR. KAPLAN: They're seeking a declaratory judgment
9 that all -- related to all thirty of the --

10 THE COURT: Does it make any difference what the
11 law -- what the situation is as to -- you took money -- you
12 took all the money -- you agree you took the money from one
13 account?

14 MR. KAPLAN: Understood.

15 THE COURT: Okay.

16 MR. KAPLAN: Understood.

17 THE COURT: Why does -- why do I care what the law is
18 as to any other account other than the one from which you took
19 the money?

20 MR. KAPLAN: Understood. There's --

21 THE COURT: Do you disagree with that?

22 MR. KAPLAN: There's --

23 THE COURT: Do you disagree with that?

24 MR. KAPLAN: Yes, Your Honor.

25 THE COURT: Why?

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1 MR. KAPLAN: There's a guarantee and indemnification,
2 so it's not necessarily that the money has to be in an account.
3 We can go to Ally Financial, if there is --

4 THE COURT: How many accounts were there?

5 MR. KAPLAN: My understanding, based in part on the
6 complaint, is that there were over thirty accounts.

7 THE COURT: Okay. And do you agree that New York law
8 applies to all thirty accounts?

9 MR. KAPLAN: Your Honor --

10 THE COURT: Will you agree that New York law --
11 whether -- so as to avoid an unnecessary --

12 MR. KAPLAN: I'm authorized for purposes of this
13 motion to --

14 THE COURT: No, we're not dealing -- I want to make
15 clear to you --

16 MR. KAPLAN: Yeah, in --

17 THE COURT: -- we're only doing it once. If there has
18 to be a court determination of the applicable law, I will do
19 that. I am going to require that you indicate within seven
20 days from today, the law that Wells Fargo believes is
21 applicable to each of the accounts and why. Okay? You've got
22 seven days to do that. No extensions will be given. This
23 should have been resolved beforehand. Okay?

24 You have the list of all thirty accounts?

25 MR. KAPLAN: No, I haven't.

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1 MR. POLLARD: Mr. Pollard, you give him the list of
2 every account that you believe that Ally had with Wells Fargo.
3 Can you do that by close of business tomorrow?

4 MR. POLLARD: Um --

5 THE COURT: This is not rocket science.

6 MR. POLLARD: No, no, I understand. Judge, I will
7 make -- I will -- Judge, I don't want to say absolutely yes,
8 without talking to the client, just in terms of finding the
9 information. But I will make every effort that I can to make
10 sure we get it to them by tomorrow.

11 THE COURT: Do you have --

12 MR. POLLARD: Whatever we have, we will --

13 THE COURT: -- do you have account records --

14 MR. POLLARD: -- he will have by tomorrow.

15 THE COURT: -- for each account that Ally had with
16 Wells Fargo?

17 MR. POLLARD: I assume that we do, Judge. I assume
18 that we do.

19 THE COURT: You and your firm, do you have account
20 records?

21 MR. POLLARD: Oh, no, no, no. No, no. My firm has
22 not --

23 THE COURT: You haven't bothered to get it? You filed
24 a complaint, you didn't bother to look at the accounts?

25 MR. POLLARD: No, we talked to the client, Judge. It

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1 was -- we talked to the client. It was -- and even -- Judge,
2 we talked to the client. I will -- whatever I can get my hands
3 on by tomorrow --

4 THE COURT: No, I am ordering you --

5 MR. POLLARD: I understand that.

6 THE COURT: -- that by tomorrow at 5 o'clock, you give
7 Mr. Kaplan a list of each of the accounts that Ally had with
8 Wells Fargo.

9 MR. POLLARD: Yes, Your Honor.

10 THE COURT: Okay. And Mr. Kaplan, you have until 5
11 p.m. seven days from today to file on the docket a statement of
12 Wells Fargo's position as to the law applicable to each of the
13 accounts, and why.

14 If the two of you can agree to resolve the issue by
15 agreeing as to which state's law will apply to the dispute as
16 to all accounts, that would simplify it. Unless there's an
17 actual conflict between the law of the potential states that
18 are involved, I believe the Court is authorized to apply New
19 York law to the dispute and we don't have to waste a lot of
20 time going through a choice-of-law fight.

21 I agree with Mr. Pollard that Ally should not have to
22 plead further until they know what law applies. So we're going
23 to settle that issue first. Discovery can go forward. I don't
24 stay discovery while a motion to dismiss is pending. If you
25 want, we'll talk about how much time you each believe you need

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1 for discovery. We're going to go forward with that. But we're
2 going to get this issue of choice of law resolved. The best
3 way to resolve it is for the two of you, obviously, with the
4 agreement of your clients, to agree on the applicable law that
5 will apply.

6 What other discovery do you wish to take?

7 MR. POLLARD: Well, Judge, I think that there's
8 probably going to be a 30(b)(6) deposition.

9 THE COURT: No, I want to know what -- okay, a
10 30(b)(6) on what issues?

11 MR. POLLARD: The -- how the account came to be
12 opened. The fees tied to the --

13 THE COURT: The same issues that you've addressed?

14 MR. POLLARD: Yes. Yes, Your -- in general, yes, Your
15 Honor.

16 THE COURT: So when I asked you about what issues you
17 want to take discovery on, you're -- in addition to whatever
18 written discovery, you want to take a 30(b)(6) deposition?

19 MR. POLLARD: At least one, Judge, on that issue. You
20 know, there's an issue as to -- as I was saying about the
21 reasonableness of the fees. And I understand they're arguing
22 that there's a release on that. And we'll deal with that when
23 the motion comes around.

24 But in terms of taking discovery, Judge, obviously
25 once we see the documents, we may have other issues that we

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1 want to pursue on that.

2 And since we're talking about discovery, I also want
3 to raise a somewhat delicate issue, and that is, Mr. Donnell
4 may well be a witness in this. When Mr. Donnell and I first
5 spoke, I told him that I didn't -- I had no position regarding
6 what should happen, but I wanted to raise with him, since the
7 reasonableness of the fees, and the necessity of the fees were
8 pled in the complaint, he may be a witness in this case.

9 I'm not waiving any of our rights. And I'm very
10 sensitive to raising issues like this, but as I said, I've
11 spoken with Mr. Donnell about this when this case was first
12 filed.

13 Now, whether we go forward --

14 THE COURT: If you're going to move to disqualify
15 counsel, you need to do it promptly --

16 MR. POLLARD: Well --

17 THE COURT: Okay -- no. I just -- there's no ifs ands
18 or buts. If you're going to move to disqualify counsel, you
19 need to do it promptly.

20 MR. POLLARD: All right.

21 THE COURT: Okay? We're not going to get --

22 MR. POLLARD: No.

23 THE COURT: -- three months or six months down the
24 road and then have a disqualification motion.

25 MR. POLLARD: I don't do that, Judge. That's why I'm

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1 raising it now. That's why I'm raising it now.

2 THE COURT: And I'm telling you that if you're going
3 to do it --

4 MR. POLLARD: I see.

5 THE COURT: -- you need to do it --

6 MR. POLLARD: I will --

7 THE COURT: -- promptly.

8 MR. POLLARD: -- we will address that, sir.

9 THE COURT: Okay. Any other discovery that you
10 believe you wish to take?

11 MR. POLLARD: Not at this time, Judge. I think
12 they're given in broad strokes, what we --

13 THE COURT: When you say "not at this time", I'm going
14 to enter a case management and scheduling order. It's going to
15 provide a cut off of fact discovery and of expert discovery.

16 MR. POLLARD: Right.

17 THE COURT: And so you're not going to be able to sort
18 of sit back and wait and see very long, because I don't just
19 simply extend time. Okay? So if there's -- what I'm going to
20 require --

21 MR. KAPLAN: Your Honor --

22 THE COURT: No, you'll get your chance.

23 When I enter my case management and scheduling order,
24 it's going to include a provision under Rule 26(f)(3) that I'm
25 going to require a discovery plan.

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1 MR. POLLARD: Yes.

2 THE COURT: Okay. Most of the issues -- from reading
3 the complaint, it seemed to me these were going to be primarily
4 legal issues. If there are factual issues, I need to -- that's
5 why I'm going to press Mr. Kaplan as well about what discovery
6 he wants to take.

7 How much time do you believe you need for fact
8 discovery?

9 MR. POLLARD: Your Honor, we had conversations -- Ms.
10 Gross had a conversation with Mr. Kaplan yesterday, and we
11 understand you have 120-day rule.

12 THE COURT: Right.

13 MR. POLLARD: The main issue that --

14 THE COURT: Well, I would say that I have a
15 presumptive time of 120 days, which I do adjust when the matter
16 appropriately calls for that.

17 MR. POLLARD: The main issue for us -- and we've
18 talked to Mr. Kaplan about this -- is that -- let me -- we did
19 a draft case management order which would have to be revised in
20 light of some of Your Honor's comments. But one of the things
21 in it is that the parties agree to act in good faith to try to
22 substantially complete document discovery within forty-five
23 days of the service of the document demand, now, because that
24 then drives what happens next.

25 In order to get finished in the 120 days, I have to

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1 get documents, and presumably he needs to get his -- my
2 documents as well --

3 THE COURT: Right.

4 MR. POLLARD: So we can then figure out what
5 depositions may be called for, what follow-up discovery may be
6 qualified. So as I said, I don't have a problem with the 120
7 days. But I do need that the order include that -- and there's
8 some language that we worked out -- the order include a good-
9 faith effort to complete document discovery within that forty-
10 five-day period.

11 THE COURT: Okay.

12 MR. KAPLAN: Your Honor?

13 THE COURT: Anything else you want to raise now,
14 before I turn to Mr. Kaplan?

15 MR. POLLARD: Could I just have a moment, Judge?

16 THE COURT: Sure.

17 MR. POLLARD: No, Judge, I don't think so. Not at
18 this time.

19 THE COURT: Okay, thank you.

20 All right, Mr. Kaplan?

21 MR. KAPLAN: Your Honor, the forty-five-day period --

22 THE COURT: Come on up to the microphone. Okay?

23 MR. KAPLAN: The forty-five-day period that Mr.
24 Pollard was discussing was based on an agreement between the
25 parties based in part of the size of the dispute that discovery

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1 would be stayed by agreement of the parties until a ruling on
2 the motion --

3 THE COURT: It's not.

4 MR. KAPLAN: I mean, I understand --

5 THE COURT: It's not.

6 MR. KAPLAN: -- I understand Your Honor's --

7 THE COURT: I don't stay discovery.

8 MR. KAPLAN: -- policy. There are a few issues,
9 though, with the scope of the discovery, specifically with
10 respect to what Mr. Pollard raised about his issue with Mr.
11 Donnell being a witness. All of this information about the
12 reasonableness of the fees was settled. The parties reached a
13 settlement agreement. And that settlement agreement is part of
14 our motion to dismiss.

15 THE COURT: Which parties reached an agreement?

16 MR. KAPLAN: Ally Financial and Wells Fargo have
17 entered into a partial settlement agreement. And that partial
18 settlement agreement said that anything about the fees, aside
19 from whether or not the amendment itself is valid, all those
20 issues are -- have been settled. So basically, the only issue
21 left is, is the amendment valid? If it is, we return the
22 money; if it is not, we keep the money.

23 So all of what Mr. Pollard --

24 THE COURT: Okay.

25 MR. KAPLAN: -- wants to get into -- and the

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1 problematic discovery here --

2 THE COURT: Do you have that settlement agreement with
3 you?

4 MR. KAPLAN: I do, Your Honor.

5 THE COURT: May I see that --

6 MR. KAPLAN: Yes, you may.

7 THE COURT: -- language you're referring to?

8 MR. KAPLAN: Exhibit 1 to our motion papers.

9 THE COURT: Is there a specific place in the --

10 MR. KAPLAN: Yeah.

11 THE COURT: If you point it out now, then we'll make
12 sure that Mr. Pollard also knows what you're pointing to.

13 MR. KAPLAN: Your Honor, may we approach?

14 THE COURT: Sure.

15 MR. KAPLAN: It's in the December 10, 2013 settlement
16 agreement on page 2.

17 THE COURT: Okay.

18 MR. KAPLAN: It's paragraph -- I've marked it. And it
19 makes a reference to reasonableness of fees, and that's what --

20 THE COURT: Sure.

21 MR. KAPLAN: -- Mr. Pollard is talking about.

22 (Pause)

23 THE COURT: All right. Let me leave it up here for a
24 minute. Do you need it back now?

25 MR. KAPLAN: No, Your Honor. No.

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1 THE COURT: I'll give it back to you before we end.

2 So tell me, what discovery do you believe Wells Fargo
3 needs to take from Ally?

4 MR. KAPLAN: We believe this can be done as a matter
5 of law. The good-faith discovery that they're talking about,
6 under -- and we've cited it in our motion papers -- but under
7 both New York law and the laws of a number of different
8 circuits that we've put in here, that is none of that good-
9 faith issue -- there's no -- if you've got a contract that's
10 clear and unambiguous on its face you can't get around those
11 terms by pleading that there's been a breach of good faith.

12 And that's what that discovery is aimed at. So
13 that's -- again, we think that that's dealt with in the
14 motion --

15 THE COURT: Is your position that if -- does the
16 deposit agreement include a provision that allows Wells Fargo
17 to unilaterally alter the terms?

18 MR. KAPLAN: Yes.

19 THE COURT: Does that mean that today you could alter
20 the terms that would would be impossible to accomplish within
21 120 days, that you could say it's effective as of tomorrow, and
22 if you don't close the account by tomorrow, you waive any
23 rights?

24 MR. KAPLAN: No, that's a good point, Your Honor. The
25 parties agreed to that --

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1 THE COURT: I don't want to -- is that your position?

2 MR. KAPLAN: The parties --

3 THE COURT: Is that your position?

4 MR. KAPLAN: Yes, Your Honor. The parties agreed to a
5 term -- a thirty-day termination provision. So either side
6 unilaterally could terminate the entire agreement on thirty
7 days. And these are sophisticated parties that negotiated it.

8 THE COURT: Okay. All right. I just wanted to --

9 MR. KAPLAN: So the ability to amend --

10 THE COURT: -- just wanted to understand your
11 position.

12 MR. KAPLAN: -- within thirty days.

13 THE COURT: Okay.

14 MR. KAPLAN: It's a lesser included.

15 THE COURT: All right. So the account agreement
16 included a provision that allowed thirty-days' notice of
17 change?

18 MR. KAPLAN: Correct.

19 THE COURT: Okay. And your position is that the plain
20 language of the agreement controls, and so they had thirty
21 days, and if they wanted to change it, they could withdraw
22 their money, close the account?

23 MR. KAPLAN: Correct.

24 THE COURT: Okay. What discovery do you wish to take?

25 MR. KAPLAN: Our understanding -- and again, this was

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1 by agreement of the parties -- and now I understand that
2 that's -- that -- I thought this was going to be dealt with by
3 motion and I'm not sure if there was going to be any discovery
4 afterwards.

5 THE COURT: Well, let me -- look. If the two of you
6 can't resolve the issue of what state's law applies, that is
7 going to be -- I take it you agree that the language of the
8 deposit agreement -- that Mr. Pollard fairly read the language
9 with respect to what state law applies?

10 MR. KAPLAN: He truncated it. But it said that the
11 applicable law that the contract -- the terms of the contract
12 apply following that -- center of law, following that you had
13 banking terms and --

14 THE COURT: Okay.

15 MR. KAPLAN: -- and then following that you had state
16 law, if applicable.

17 THE COURT: Look, if there has to be -- if you can't
18 agree on what state's -- when I say "you agree", the two of you
19 agree on what state law will be deemed to apply to the dispute,
20 then there's going -- I understand Mr. Pollard's position that
21 there's going to need to be discovery on it. Okay?

22 MR. KAPLAN: And I understand that. I don't think
23 there's much -- there's going to be much difference about plain
24 language of a contract --

25 THE COURT: So may I ask you, do you think it's

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1 possibly more than Michigan, New York, or North Carolina law
2 that applies?

3 MR. KAPLAN: There's a possibility of Pennsylvania and
4 a possibility of Delaware. But I haven't heard in any --

5 THE COURT: And --

6 MR. KAPLAN: -- discussions any --

7 THE COURT: -- have you looked to see whether the law
8 of those states differs on the issues in dispute?

9 MR. KAPLAN: My understanding is that they all find
10 that if a contract is clear and unambiguous on its face, it's
11 to be applied.

12 THE COURT: Are there any other state principles of
13 law, in your view, that have to be applied in resolving the
14 dispute?

15 MR. KAPLAN: The question of whether you can plead a
16 good faith to get around that. And we've -- basically, again,
17 that's uniform throughout the circuits that we discussed.

18 THE COURT: Okay. So you don't believe that there is
19 an actual conflict between the laws of the possibly applicable
20 states?

21 MR. KAPLAN: Correct, Your Honor.

22 THE COURT: That's your position?

23 MR. KAPLAN: Correct, Your Honor.

24 THE COURT: Okay. Do you agree that if that's true,
25 that the Court can simply determine that it'll apply forum law,

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1 New York law? That's what I understand the -- where there's a
2 choice-of-law issue, it only becomes relevant if there's an
3 actual conflict. In the absence of an actual conflict, the
4 Court can choose to apply New York law, because that's where I
5 sit. Do you agree or disagree with that?

6 MR. KAPLAN: I have not checked the --

7 THE COURT: Okay.

8 MR. KAPLAN: -- choice-of-law rules.

9 THE COURT: Fair enough. Fair enough. Okay.

10 As you stand there now, are there any other issues as
11 to which you wish to take discovery?

12 MR. KAPLAN: Your Honor, I'll need to go back and
13 consider what issues -- if we're not going to wait until after
14 the motion's decided, I'll have to consider --

15 THE COURT: We're not going to wait until after the
16 motion's --

17 MR. KAPLAN: Understood, Your Honor.

18 THE COURT: Okay. How much time to you believe you
19 need for discovery?

20 MR. KAPLAN: I think the 120-day period is reasonable.

21 THE COURT: So let me just briefly describe to both of
22 you how I -- because that's -- the template for my case
23 management and scheduling order which appears on the Web site
24 includes the 120 days. And that's sort of the presumptive
25 amount of time I use.

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1 In more complicated cases, yes, I do even initially
2 provide longer. I think the longest -- well, once or twice
3 I've used six months, because it was a particularly complex
4 dispute. So the last paragraph of that case management order
5 requires that at least five days before the end of the period,
6 parties move -- if they're going to request an extension of
7 time, they do it -- it probably ought to be even before that.

8 And the question I always ask before deciding whether
9 to extend time is, what discovery have you done so far and what
10 remains to be done. So where the parties have been proceeding
11 in good faith, and there -- it's turned out additional issues
12 show up, it's required additional discovery, I try to be
13 reasonable. I don't simply say no, no extension of discovery.

14 Where people get into problems is when they wait till
15 the 110th day of the 120-day period, they haven't done any
16 discovery, and they agree with their adversary, oh, let's
17 extend the time by three months. It doesn't happen. Okay? I
18 just want to make that clear.

19 I always try to be reasonable. And look, there's
20 always -- it frequently is the case that there's problems
21 scheduling a deposition, because people's travel schedules or
22 whatever; there's a few clean-up items that have to be done. I
23 try to be reasonable about it. So the thing -- it isn't enough
24 to just come to me and say we've agreed to extend discovery --
25 fact discovery by thirty or sixty days. The question is, what

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1 have you done; what remains to be done? Okay, so that's
2 basically how it works.

3 The language that is not in the template that's on the
4 Web site, but it's in another form that I use, adds a paragraph
5 on a discovery plan. And in this case I'm going to require
6 that as well.

7 Anything else you want to say at this point?

8 MR. KAPLAN: No, Your Honor.

9 THE COURT: All right, Mr. Pollard, what about --
10 before I give Mr. Kaplan back his copy of the motion to dismiss
11 which attached what he described as the settlement -- partial
12 settlement between Ally and Wells, it sure looks to me the
13 paragraph he pointed out on page 2 in paragraph 2, appears to
14 reflect an agreement that there will not be a further challenge
15 to the reasonableness of Winston's fees and expenses in
16 representing Wells Fargo regarding the debtors and Ally?

17 MR. POLLARD: First, Your Honor, that document you're
18 reading has been sealed. It's a confidential document.
19 That's -- I have to put that on the record, Judge.

20 THE COURT: You know, when you appear before me, and I
21 ask a question --

22 MR. POLLARD: Yes, sir.

23 THE COURT: -- so I want to see it. I've seen it.

24 So --

25 MR. POLLARD: No, no. I'm not --

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1 THE COURT: -- the document can remain sealed, but my
2 question nevertheless remains.

3 MR. POLLARD: I --

4 THE COURT: This language of this sealed document
5 appears to resolve the issue of the reasonableness of the fees.
6 You've got lots to fight about, but not the reasonableness of
7 the fees.

8 MR. POLLARD: Your Honor, I think, in part, that also
9 goes to the validity of the underlying agreement. Because our
10 theory is that this was a one-off agreement that Wells Fargo --

11 THE COURT: Are you telling me that the December 10,
12 2013 agreement --

13 MR. POLLARD: No.

14 THE COURT: -- is a one -- it may be a one-off
15 agreement --

16 MR. POLLARD: No.

17 THE COURT: -- but it resolves issues in part between
18 the two parties. And it seems to resolve the issue and put to
19 rest the issue of the reasonableness of the fees. Agreed or
20 disagreed?

21 MR. POLLARD: I'm speaking of a different agreement.

22 THE COURT: I'm asking about this agreement.

23 MR. POLLARD: That agreement, Your Honor, with respect
24 to resolving the reasonableness of the fees, does not resolve
25 the issue regarding their lack of good faith in entering into

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1 the contract.

2 THE COURT: That may be.

3 MR. POLLARD: I mean, in amending the contract.

4 THE COURT: That may be. That's what you -- the two
5 of you are fighting about. But what it seems to me to resolve
6 is the issue -- assuming they prevail on the contract
7 interpretation issues, that the reasonableness of the fees --
8 of Winston's fees and expenses in representing Wells Fargo
9 regarding the debtors and Ally, that issue had been resolved
10 between the parties. Agreed or disagreed?

11 MR. POLLARD: If that's how Your Honor reads the
12 agreement --

13 THE COURT: Well, I'm -- but I asked -- no. I'm
14 asking you. You have the language in the front of you?

15 MR. POLLARD: Yes, Your Honor.

16 THE COURT: I have the language in front of me.

17 MR. POLLARD: Yes, Your Honor.

18 THE COURT: Do you agree that the parties resolved the
19 issue of the reasonableness of the fees? It leaves open the
20 issue of whether the agreement is valid or not, but as to the
21 reasonableness of the fees, that issue has been resolved by the
22 parties as of -- what did I say, December 10th -- December --
23 February -- well, what's the -- the date of the letter is
24 December 10th --

25 MR. POLLARD: December 10th, 2013.

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1 THE COURT: -- 2013. That appears to have resolved
2 the issue of the reasonableness. Not any of the other issues
3 you've raised, but as to the reasonableness of the fees.
4 Agreed or disagreed?

5 MR. POLLARD: Disagreed to this extent -- to this
6 extent. I believe that the unreasonableness of the fees is
7 relevant to the validity of the agreement. It goes to the
8 good-faith nature of the amendment. It also goes to our theory
9 that the amendment, which is in a letter form, is a one-off
10 agreement that was put together in order to unfairly and
11 illegally shift the cost that Wells Fargo wanted to incur.

12 THE COURT: Tell me this. Was Timothy Devine chief
13 counsel --

14 MR. POLLARD: Yes.

15 THE COURT: -- litigation --

16 MR. POLLARD: Yes, Judge.

17 THE COURT: -- authorized to enter into the December
18 10th, 2013 agreement?

19 MR. POLLARD: I have not asked him about that, but I
20 assume that he was, Judge.

21 THE COURT: All right. There will be no discovery, at
22 this stage in the case, about the reasonableness of the fees.

23 MR. POLLARD: Yes, Judge.

24 THE COURT: You're going to have an uphill battle to
25 persuade me that that issue remains in the case. It appears to

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1 me that the December 10th, 2013 letter signed by Mr. Devine on
2 behalf of Ally Financial, Inc., and signed by Paul Nobel (ph.)
3 on behalf of Wells Fargo, resolves that issue. Before you
4 endeavor to take any discovery about the reasonableness of the
5 fees, you're going to have to come back to me about it.

6 MR. POLLARD: Understood.

7 THE COURT: All right. So what I'm going to do, I'm
8 going to enter a scheduling order providing for 120 days of
9 fact discovery, 45 days of expert discovery thereafter. You
10 can give us the language the two of you have agreed on -- I'll
11 look at it -- with respect to the good-faith effort to produce
12 documents within forty-five days. I will look at it and decide
13 whether to include it. I don't have -- I don't think I oppose
14 it, but I will -- if it should be included, I'll include it.

15 MR. KAPLAN: It was really based on if there was going
16 to be a stay of discovery --

17 THE COURT: Well, we're not staying discovery.

18 MR. KAPLAN: Understood. So I don't think it's
19 necessary to have that in the order, Judge.

20 MR. POLLARD: Well, I think the -- the issue, Judge,
21 is that if we're going to do 120 days to complete fact
22 discovery, I need to get the documents --

23 THE COURT: Let me see the language, and I'll decide
24 whether to put it in. All right?

25 MR. POLLARD: We'll show it to you, Judge. If you

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1 want, I'll read it to you.

2 THE COURT: No, I'm going to -- this is going to get
3 entered on our computer and --

4 MR. POLLARD: Understood.

5 THE COURT: -- so we want to see it.

6 MR. POLLARD: We'll get that to you today.

7 THE COURT: We want to see it.

8 Okay, anything else?

9 All right. So I have given you time to identify each
10 of the accounts, and I've given Wells' counsel time to indicate
11 what law they believe applies and why. And what I'm hoping is,
12 is that the two of you can simply resolve this issue. I mean,
13 there isn't a whole lot of difference in most states' law with
14 respect to how to interpret -- the principles for interpreted
15 contracts. See if you can resolve it. Okay?

16 MR. POLLARD: And as I understand it, Judge, our time
17 to respond to the motion to dismiss is going to be reset once
18 the choice of law issue is resolved?

19 THE COURT: It will.

20 MR. POLLARD: Thank you.

21 THE COURT: All right. That took longer than I
22 thought it was going to; but let's take ResCap Liquidating
23 Trust v. Mortgage Investors Group, adversary proceeding
24 14-02004.

25 MS. KONANOVA: Good morning, Your Honor. Yelena

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1 Konanova, Quinn Emanuel, for the Trust.

2 THE COURT: Good morning.

3 MS. KONANOVA: The second amended complaint was filed
4 and served here on --

5 THE COURT: You know, we tried -- you got on a plane
6 to come?

7 MR. REYNOLDS: I was on a plane.

8 THE COURT: I apologize about it. I tried to avoid
9 it, but I guess you were on the plane already.

10 MR. REYNOLDS: I did. Never mind.

11 THE COURT: So nice to see you anyway.

12 Let me get both appearances. You -- I've got your
13 appearance in.

14 MR. REYNOLDS: Roland Reynolds for Mortgage Investors
15 Group, a General Partnership; Mortgage Investors Group, Inc.;
16 and American Real Estate.

17 THE COURT: So you're appearing for all the defendant?

18 MR. REYNOLDS: All the defendants.

19 THE COURT: Okay, thanks very much. And again I -- go
20 ahead.

21 Is there anything that we have to agree on today?

22 MR. REYNOLDS: No, we just need to -- the CMO doesn't
23 provide for bringing new parties into it. A prior one did. So
24 we have two new parties. So we just have to say they're going
25 to be part of that CMO.

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1 THE COURT: Could I ask you to do this, one of you, is
2 just prepare a proposed order that --

3 MR. REYNOLDS: All right.

4 THE COURT: -- provides that the -- I don't remember
5 what number we're on, on the CMO at this point -- three? I
6 don't know -- shall apply to the new parties. That's what
7 should be done. Okay?

8 MR. REYNOLDS: Great.

9 THE COURT: Okay, and again, I'm sorry that -- where
10 did you fly from?

11 MR. REYNOLDS: Los Angeles. I get to be in New York.
12 That's always good.

13 THE COURT: Yeah, we've had such wonderful weather,
14 I'm sure you wanted to be here. But --

15 MR. REYNOLDS: Yeah.

16 THE COURT: -- it's a little warmer today, so.

17 MR. REYNOLDS: Right.

18 THE COURT: Not much.

19 MR. REYNOLDS: All right.

20 THE COURT: Again. I'm always happy to have counsel
21 appear in person if you're -- if you make a motion and you're
22 going to argue a motion, I do want you here to do that. It's a
23 little more difficult to do it over the phone. If you're
24 just -- if you're appearing in connection with another motion
25 and you're not the principal advocate, I permit people to

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1 appear by telephone. Okay?

2 MR. REYNOLDS: I appreciate that, Your Honor.

3 THE COURT: Okay.

4 MR. REYNOLDS: Obviously, for this sort of thing, I
5 had to be, but --

6 THE COURT: Okay.

7 MR. REYNOLDS: -- I'll take advantage of that.

8 THE COURT: All right.

9 MR. REYNOLDS: Appreciate it.

10 THE COURT: It's a lot warmer -- you having warm
11 weather in California?

12 MR. REYNOLDS: I have to admit --

13 THE COURT: Warmer and very dry weather.

14 MR. REYNOLDS: -- it's pretty nice. I roll the
15 windows down in the car on the way in yesterday. So --

16 THE COURT: Okay. Well, thanks again. Okay, thank
17 you very much.

18 MS. KONANOVA: Thank you.

19 THE COURT: All right, so just agree on the form of
20 the order and submit it to chambers, and we'll get it entered.
21 Okay?

22 MR. REYNOLDS: Okay.

23 THE COURT: Thanks very much.

24 All right, Mr. Wishnew?

25 MR. WISHNEW: Thank you, Your Honor. Good morning,

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1 Your Honor, Jordan Wishnew, Morrison & Foerster, for the ResCap
2 Borrower Claims Trust.

3 We move now to III on page 9 of this morning's agenda,
4 the objection of the ResCap Borrower Claims Trust to the proof
5 of claim filed by Francine Silver, claim number 61.

6 THE COURT: Is someone -- is Ms. Silver here?

7 MS. WISHNEW: I don't -- I don't know if her or her
8 son might be appearing telephonically.

9 THE COURT: All right, is anybody appearing for
10 Francine Silver?

11 (Garbled speech on phone line)

12 THE COURT: I'm sorry, I couldn't understand you.

13 (Garbled speech on phone line)

14 THE COURT: If you're making an appearance for Ms.
15 Silver, you need to identify yourself clearly.

16 One last effort; is anyone appearing on behalf of
17 Francine Silver?

18 Go ahead, Mr. Wishnew.

19 MR. WISHNEW: Thank you, Your Honor. In support of
20 the objection, the Borrower Trust submitted four declarations:
21 one by Ms. Priore, associate counsel of the ResCap Liquidating
22 Trust; one by Ms. Jacqueline Keeley, former employee of GMAC
23 Mortgage; another by David Liu, of Severson & Werson; and one
24 by Mr. Rosenbaum from Morrison & Foerster. Ms. Priore, Mr.
25 Liu, and Ms. Keeley are all on the phone today.

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1 The objection was filed --

2 THE COURT: Since Ms. Silver is not appearing --

3 MR. WISHNEW: Sure, Your Honor.

4 THE COURT: -- let me ask some specific questions.

5 MR. WISHNEW: Okay.

6 THE COURT: Okay? Because I've read everything.

7 MR. WISHNEW: Yes.

8 THE COURT: So as I understand it, GMAC filed a
9 demurrer to the second amended complaint, on May 21, 2014, in
10 the Los Angeles Superior Court, and the demurrer is scheduled
11 for argument on May 14th, 2005 -- 2015; excuse me.

12 MR. WISHNEW: Correct, Your Honor, yes.

13 THE COURT: Why is it taking so long to get a hearing
14 on a demurrer?

15 MR. WISHNEW: I would have to defer to Mr. Liu on
16 that; I don't know. Often it's, frankly, a matter of the
17 court's docket. I really don't have a full understanding of
18 the California court scheduling.

19 MR. LIU: Your Honor, this is David Liu, L-I-U, on
20 CourtCall.

21 THE COURT: Yes.

22 MR. LIU: I can just advise that the demurrer is set
23 in the Santa Monica courthouse, and it's just extremely,
24 extremely backed up.

25 THE COURT: Okay. So scheduling it has just been a

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1 matter of the court's schedule, as opposed to the parties
2 agreeing to delay the hearing?

3 MR. LIU: That's correct, Your Honor. I can't
4 remember when we filed it, but I --

5 THE COURT: Filed it May 21 --

6 MR. LIU: Yeah, that's correct, Your Honor.

7 THE COURT: -- 2014. So it's essentially almost a
8 year to get a hearing on a demurrer.

9 MR. LIU: That's right, Your Honor.

10 THE COURT: Before whom is the motion pending?

11 MR. LIU: Judge Allan Goodman, Your Honor.

12 THE COURT: Okay. Mr. Wishnew?

13 MR. WISHNEW: Yes, Your Honor.

14 THE COURT: So the demurrer raises the issue, as I
15 understand it, of Ms. Silver's standing to challenge the
16 nonjudicial foreclosure, standing to challenge any
17 securitization of the deed of trust, and Silver's showing with
18 respect to whether there's been an assignment of the deed of
19 trust. Do you agree?

20 MR. WISHNEW: Yes, Your Honor.

21 THE COURT: The objection that's pending before me
22 also seeks to resolve the issue of the validity of the
23 assignment, correct?

24 MR. WISHNEW: Yes, Your Honor.

25 THE COURT: I'm always reluctant to try and decide --

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1 to decide a matter that's pending before another court. On the
2 other hand, if it's taken a year just to get a hearing, and
3 there's no indication how quickly it would be resolved, I
4 wanted to raise that issue, because it is of concern to me.

5 With respect to the issue of the validity of the
6 assignments of the deed of trust, as I understand it, that
7 issue focuses on whether Ms. Keeley was authorized to and did
8 execute the assignments; is that a fair statement?

9 MR. WISHNEW: Yes, Your Honor.

10 THE COURT: And I further understand that two
11 different judges, the bankruptcy judge, in Ms. Silver's
12 bankruptcy case, and a state court judge, in the action pending
13 in Los Angeles Superior Court, have both raised the issue
14 whether the assignment includes a forgery; is that a fair
15 statement?

16 MR. WISHNEW: Yes, Your Honor.

17 THE COURT: And what may be different is you've
18 provided me with a Keeley declaration.

19 MR. WISHNEW: I would absolutely agree on that point,
20 Your Honor.

21 THE COURT: Okay. Is Ms. Keeley still employed by one
22 of the -- by the Trust or by one of the --

23 MR. WISHNEW: No --

24 THE COURT: -- former debtors?

25 MR. WISHNEW: -- Your Honor, she's actually, I

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1 believe, currently employed by Ocwen Financial.

2 THE COURT: Okay. In what state?

3 MR. WISHNEW: I believe in Pennsylvania. I believe
4 it's out of the Fort Washington office.

5 But Ms. Keeley, I think you're on the phone. Is that
6 correct?

7 MS. KEELEY: Yes, that's correct.

8 MR. WISHNEW: Thank you.

9 THE COURT: All right. In light of the decisions of
10 the two judges, the bankruptcy judge and the superior court
11 judge, raising what they believe were substantial questions
12 about whether the assignments included a forgery, I'm going to
13 schedule a limited evidentiary hearing on the issue of the
14 validity of the assignments. And -- because I would like Ms.
15 Keeley here to testify about -- you provided the declaration.
16 We're not going to go through a deposition. If Ms. Silver
17 wants to show up and cross-examine, she can.

18 MR. WISHNEW: Okay.

19 THE COURT: But I want to hear the testimony myself.
20 You may be familiar with my colleague Judge Drain's recent
21 decision involving Wells Fargo, and alleged forgery of
22 assignments on behalf of MERS. If you're not familiar with it,
23 become familiar with it.

24 MR. WISHNEW: Absolutely, Your Honor.

25 THE COURT: Bear with me a second.

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1 To be specific, I'm referring to Judge Drain's January
2 28th, 2015 decision in In re: Cynthia Carrsow-Franklin, case
3 number 10-20010, Memorandum of Decision on Debtor's Objection
4 to Claim of Wells Fargo Bank N.A.

5 What I'd ask you to do is speak with Ms. Keeley --

6 MR. WISHNEW: Um-hum.

7 THE COURT: -- and try to coordinate with her, and
8 with one of my law clerks, a date on which we can go forward
9 with an evidentiary hearing. I don't anticipate that it will
10 last more than two hours. I don't think it will last two
11 hours.

12 MS. ARETT: Okay.

13 THE COURT: If it's on an omnibus day, you can put it
14 on an afternoon of an omnibus day, not when there are other
15 matters on the calendar. I want to try -- since Ms. Keeley is
16 not employed by any of the debtors, but by Ocwen, I want to try
17 and accommodate her schedule and your schedule. Work out the
18 dates. Since Ms. Silver is not on the phone, we'll -- once the
19 date is set for the hearing, we'll post notice of it. And I
20 would direct you to also serve the notice on her.

21 If she wishes to appear and cross-examine, she has to
22 appear in person; I don't permit examination of witnesses over
23 the telephone. So the order will provide that she needs -- if
24 she's going to appear, she needs to appear in person. The
25 hearing will go forward whether she's here or not.

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1 I want to hear the testimony about the execution of
2 the assignments. Obviously, two judges, comparing signatures
3 on a number of documents, thought that they weren't the same.

4 MR. WISHNEW: Understood, Your Honor.

5 THE COURT: Okay?

6 MR. WISHNEW: Yep.

7 THE COURT: I don't need to hear argument about any of
8 the other issues concerning the Francine Silver claim. This is
9 the Trust's objection to claim number 61, filed by Francine
10 Silver. Okay?

11 MR. WISHNEW: Very good, Your Honor. I will turn the
12 podium over to my colleague Meryl Rothchild.

13 THE COURT: Ms. Keeley, you're excused, if you wish
14 to, though you can stay on. Thank you for participating by
15 telephone.

16 MS. KEELEY: Thank you.

17 MR. WISHNEW: And could we also release Mr. Liu as
18 well?

19 THE COURT: Yes, absolutely.

20 MR. WISHNEW: Thank you.

21 THE COURT: Thank you, Mr. Liu.

22 MR. LIU: Thank you, Your Honor.

23 MS. KEELEY: Thank you.

24 MR. WISHNEW: So I will turn the podium over to my
25 colleague, Ms. Meryl Rothchild, who will handle item number 2

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1 on page 10.

2 THE COURT: Okay.

3 MR. SILBER: Excuse my tardiness. Do I have to
4 announce that I'm here or --

5 THE COURT: No. Tell me your name.

6 MR. SILBER: Todd Silber, claim 4222 --

7 THE COURT: We'll get to yours. When I call yours,
8 you'll --

9 MR. SILBER: Sorry for my tardiness.

10 THE COURT: You're here in plenty of time.

11 MR. SILBER: Thank you.

12 THE COURT: Okay?

13 MR. SILBER: Okay.

14 THE COURT: Go ahead, Ms. Rothchild.

15 MS. ROTHCHILD: Thank you, Your Honor. Good morning.

16 As Mr. Wishnew stated, the next matter, on the claims
17 objections list going forward, is number 2, on page 10 of the
18 agenda, the objection of the ResCap Borrower Claims Trust to
19 claim number 2267, filed by Abosede Eboweme, and that is at
20 docket number 8018.

21 THE COURT: I don't know -- is it a he or a she?

22 MS. ROTHCHILD: I believe it's a she, Your Honor.

23 THE COURT: All right. Is Ms. Eboweme in court or on
24 the telephone? Is anyone appearing on behalf of Ms. Eboweme?
25 This is the Trust's objection to claim number 2267.

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1 Go ahead, Ms. Rothchild.

2 MS. ROTHCHILD: Thank you, Your Honor. In support of
3 the objection, the Trust submitted two declarations, one by Ms.
4 Kathy Priore, for the ResCap Liquidating Trust, attached as
5 Exhibit 3 to the objection, and the other by Mr. Jon Patterson
6 of Bradley Arant Boult Cummings, attached as number 4.

7 The response deadline for the objection was February
8 12th. On or about February 18th, Ms. Eboweme filed a letter
9 directed to the Court, at docket number 8144. Ms. Eboweme
10 stated, among other things, in this letter, that she objects to
11 Ocwen and ResCap filing a motion against her. She also alleges
12 that she didn't get a copy of the objection, and further states
13 that she has nothing to do with Ocwen and ResCap, as neither
14 should be in her case with Bank of America.

15 THE COURT: Well, she has a case against Bank of
16 America.

17 MS. ROTHCHILD: Correct.

18 THE COURT: Okay. But she filed a proof of claim
19 here.

20 MS. ROTHCHILD: She did. She filed -- exactly. She
21 filed --

22 THE COURT: Okay.

23 MS. ROTHCHILD: -- a singular proof of claim with no
24 documents appended to that claim.

25 So as an initial matter, Ms. Eboweme was properly

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1 served with the objection. The Borrower Trust's noticing and
2 claims agent filed an affidavit of service on the docket at
3 docket number 8029, and Ms. Eboweme was served by mail and
4 overnight mail.

5 THE COURT: Okay. And you checked the address, and
6 the address is correct?

7 MS. ROTHCHILD: Yes, Your Honor, we confirmed all of
8 that, and nothing was returned as undeliverable.

9 So Your Honor, claim number 2267, as I just mentioned,
10 only consists of a proof of claim form. Ms. Eboweme didn't
11 include any document in support, nor did she append any
12 documents in connection with her letter that she filed on the
13 docket just last week. The Borrower Trust conducted an
14 exhaustive examination of the debtors' books and records, their
15 servicing notes, as well as Ms. Eboweme's litigation history,
16 to assess the allegations that Ms. Eboweme has made. And the
17 Trust concluded that the debtors' prior conduct, in connection
18 with Ms. Eboweme's loan documents, is entirely consistent with
19 their respective vested rights with those loan documents.

20 Therefore, the Borrower Trust believes it's addressed
21 and rebutted each of the claims raised by Ms. Eboweme and
22 respectfully requests that the claim be expunged.

23 THE COURT: Can I ask you this? Ms. Eboweme had filed
24 a Chapter 13 case in bankruptcy court in Texas --

25 MS. ROTHCHILD: Yes.

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1 THE COURT: -- correct? Am I correct that the Texas
2 bankruptcy court, on three separate occasions, granted Bank of
3 America relief from stay?

4 MS. ROTHCHILD: I believe two separate occasions.

5 THE COURT: Okay, because I'm seeing September 13th,
6 2010 --

7 MS. ROTHCHILD: Um-hum.

8 THE COURT: -- granted the motion of BoA to foreclose
9 on the property. On February 14th, 2011, granted BoA's stay
10 relief motion. And on March 7th, 2011 -- oh, no, okay.
11 Well -- no, those are the two occasions; I thought there was a
12 third one.

13 MS. ROTHCHILD: Right, so there are two. Again, I
14 believe Ms. Eboweme, and I'm not sure what relation her -- the
15 other person, who is a co-borrower --

16 THE COURT: Yeah.

17 MS. ROTHCHILD: -- so Bank of America filed two
18 motions for stay relief, which were, for all intents and
19 purposes, identical.

20 THE COURT: Okay.

21 MS. ROTHCHILD: And it just took, I guess, awhile for
22 the court --

23 THE COURT: All right.

24 MS. ROTHCHILD: -- to enter those orders.

25 THE COURT: Okay. Let me see if I have other

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1 questions. So in March 2012, Ms. Eboweme filed an action in
2 the state court in Texas, alleging causes of actions for
3 wrongful foreclosure, lack of standing to foreclose, violations
4 of the bankruptcy stay, intentional infliction of emotional
5 distress, violations of RESPA, Texas Finance Code, Sections
6 392.30 and 392.304, and also the Texas Deceptive Practices Act.
7 It named GMAC, Bank of America, Bank of New York Mellon, and
8 Ferguson Christopher.

9 MS. ROTHCHILD: Correct.

10 THE COURT: And so in the claim that she's asserted
11 here, does it raise each of the causes of action that were
12 raised in her Texas state court complaint?

13 MS. ROTHCHILD: Her proof of claim form does not list
14 all of those causes of action. What we did, though, is we
15 reviewed -- she did file a response to the request letter that
16 the Borrower Trust had mailed out to her.

17 THE COURT: Referring to the Texas action.

18 MS. ROTHCHILD: Referring to it, and subsequently just
19 outlining --

20 THE COURT: Okay.

21 MS. ROTHCHILD: -- those very --

22 THE COURT: So those are what I have to deal with.

23 MS. ROTHCHILD: Correct. And that is what the Trust
24 addressed --

25 THE COURT: Yes.

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1 MS. ROTHCHILD: -- in its objection. And if Your
2 Honor would like, I can give a status update as to that
3 action --

4 THE COURT: Sure.

5 MS. ROTHCHILD: -- as there was a hearing on, I
6 believe, January 30th --

7 THE COURT: Yes.

8 MS. ROTHCHILD: -- of this year. It is my
9 understanding that the judge is delaying his ruling because he
10 has asked that BABC put together an affidavit from Ocwen.
11 Ocwen has been asked to join that proceeding. That would put
12 into evidence Ms. Eboweme's loan history and would effectively
13 track the evidence of her loan being part of the sale of loans
14 from GMAC Mortgage over to Ocwen. It's taking some time.

15 THE COURT: Well, the loan wasn't sold; the servicing
16 was sold.

17 MS. ROTHCHILD: The ser -- excuse me, yes, the
18 servicing was sold. That is expected to be submitted in the
19 next couple of weeks, and it is my understanding, though I
20 don't have a transcript before me, that the Court said that
21 once he receives this particular affidavit, that he will be
22 ready to rule, and that Ms. Eboweme has not refuted any of the
23 evidence that has been presented --

24 THE COURT: Okay.

25 MS. ROTHCHILD: -- and that she hasn't paid her loan,

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1 and the foreclosure is proper.

2 THE COURT: All right. I'm going to take the Eboweme
3 matter under submission.

4 MS. ROTHCHILD: Okay.

5 THE COURT: Thank you very much, Ms. Rothchild.

6 MS. ROTHCHILD: Thank you, Your Honor.

7 My colleague, Jessica Arett, will be taking the next
8 matter on the agenda.

9 THE COURT: Thank you very much.

10 MS. ARETT: Good morning, Your Honor. Jessica Arett
11 of Morrison & Foerster on behalf of the ResCap Liquidating
12 Trust.

13 The next claims objection matter on the agenda is
14 number 3, on page 10 of the agenda, the eighty-first omnibus
15 claims objection: duplicate claim, insufficient documentation
16 claims, no liability claims, redesignate and allow claim, and
17 reduce and allow claims. It was filed at docket number 8013.
18 And it's going forward on an uncontested basis.

19 The purpose of this objection is multifold. Through
20 the eighty-first omnibus claims objection, the Trust seeks to
21 expunge a total of 120 claims, reflected on Exhibits A, B, and
22 C, on grounds that they were substantially duplicative of
23 another claim filed by the same claimant, lacked sufficient
24 supporting documentation as to the validity and amount, and had
25 no basis in the debtors' books and records, or were not

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1 reflected in the debtors' historical amounts payable.

2 THE COURT: Let me ask you this. I thought that this
3 was going forward as to Monty and Heather Allen.

4 MS. ARETT: Yes, Your Honor, but the Trust
5 consensually resolved the Allen claim, and as a result, both
6 resolving the objection and --

7 THE COURT: It would have been nice --

8 MS. ARETT: -- the stay relief motion.

9 THE COURT: -- if I knew this --

10 MS. ARETT: I believe --

11 THE COURT: -- before my law clerks and I had spent a
12 considerable amount of time preparing for the Allen issue.

13 MS. ARETT: I apologize, Your Honor. We resolved
14 it -- I believe the stipulation was signed yesterday.

15 THE COURT: The way I learn, if you want to call it
16 that, is when reading the agenda. On page 10, it shows the
17 eighty-first omnibus and says status: the hearing -- and it
18 lists the response from Monty and Heather Allen, and then it
19 says the matter is going forward on an uncontested basis.
20 Well, that's interesting; I'm glad we spent all this time
21 preparing.

22 MS. ARETT: I apologize, Your Honor.

23 THE COURT: Okay. Well, you didn't get it resolved
24 until yesterday. Okay. Then let me short circuit the
25 discussion.

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1 So pending before the Court is the ResCap Liquidating
2 Trust's eighty-first omnibus objection to claims:
3 (A) Duplicative claims; (B) Insufficient documentation claims;
4 (C) No liability claims; (D) Redesignate and allow claim; and
5 (E) Reduce and allow claims. It's at ECF 8013.

6 The Trust objects to one claim on the grounds that it
7 is duplicative of another claim. See objection Exhibit 2A.

8 The Trust objects to ninety-three claims on the
9 grounds of insufficient documentation to support the claims.
10 See Exhibit 2B.

11 The Trust objects to twenty-seven claims on the ground
12 that the claims fail to establish liability on the part of the
13 debtors. See Exhibit 2C.

14 The Trust seeks to redesignate and allow one claim,
15 Exhibit 2D, as well as to reduce and allow five claims, Exhibit
16 2E.

17 The objection is supported by the declaration of
18 Deanna Horst; that's at ECF 8031-2.

19 Two claims -- I think this remains correct. Two
20 claims, 2091, by Wilson & Associates, and 434, by Fein, Such,
21 are not going forward.

22 Am I correct?

23 MS. ARETT: The Trust has reached settlements with
24 both of these claimants --

25 THE COURT: Okay.

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1 MS. ARETT: -- and to allow their claim in a modified
2 amount.

3 THE COURT: All right.

4 MS. ARETT: And these modifications will be reflected
5 on the updated exhibits that the Trust will provide to the
6 Court.

7 THE COURT: Okay. And you've advised me that claim
8 6768, filed by Monty and Heather Allen, has now been resolved.

9 MS. ARETT: Correct.

10 THE COURT: All right. So the Court has -- I mean, if
11 there's something else you want to tell me --

12 MS. ARETT: I think you covered it all, Your Honor.

13 THE COURT: Okay. So the Court has reviewed the
14 eighty-first omnibus objection, and other than those claims
15 that are not going forward today, the Court concludes that the
16 objections are properly supported and well taken, and the
17 objection is sustained.

18 MS. ARETT: Thank you, Your Honor.

19 THE COURT: Okay. Thank you.

20 Mr. Silber, I think we're up to you.

21 MR. WISHNEW: Jordan Wishnew for the ResCap Borrower
22 Claims Trust.

23 Again, Your Honor, my apologies for our office not
24 apprising you sooner of the Allen resolution.

25 THE COURT: I'm happy it's resolved.

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1 MR. WISHNEW: As --

2 THE COURT: Sooner is always better than later, but --

3 MR. WISHNEW: Absolutely, Your Honor.

4 THE COURT: -- but resolved is better than not

5 resolved; let me put it that way.

6 Let me get the appearance on this.

7 MR. WISHNEW: Absolutely, Your Honor.

8 Again, Jordan Wishnew for the ResCap Borrower Claims
9 Trust, concerning item 4 on page 10, the ResCap Borrower Claims
10 Trust's objection to claim number 4222, filed by Todd Silber,
11 S-I-L-B-E-R.

12 THE COURT: All right. Mr. Silber, you want to make
13 your appearance?

14 MR. SILBER: Good morning, Your Honor. Again, sorry
15 for my tardiness. I traveled --

16 THE COURT: You weren't tardy.

17 MR. SILBER: Okay. Thank you.

18 THE COURT: I just called your matter now.

19 MR. SILBER: Okay.

20 THE COURT: So --

21 MR. SILBER: Excellent. Todd Silber, pro se claimant,
22 for 4222.

23 THE COURT: Okay. Why don't you have a seat, and I'll
24 give you a chance --

25 MR. SILBER: Thank You.

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1 THE COURT: -- to respond, okay?

2 MR. WISHNEW: Thank you, Your Honor. Your Honor, so
3 the objection to Mr. Silber's claim was filed at docket number
4 7979. Mr. Silber filed a response on January --

5 THE COURT: This is claim 4222?

6 MR. WISHNEW: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. WISHNEW: Mr. Silber filed a response to the
9 objection on January 30th, which was docketed at 8024. The
10 Trust filed its reply on February 20th at docket number 8160.

11 Your Honor, through this objection, the Borrower Trust
12 seeks to expunge Mr. Silber's claim. The Borrower Trust
13 asserts the allegations in the proof of claim are without
14 merit, as Mr. Silber has failed to allege how the debtors' pre-
15 petition actions give rise to liability for the stated causes
16 of action. Accordingly, the Borrower Trust believes the claim
17 does not represent a valid pre-petition claim against the
18 debtors' estates.

19 In support of the objection, the Borrower Trust
20 submitted two declarations from Ms. Priore, who was associate
21 counsel to the ResCap Liquidating Trust. The first is attached
22 as Exhibit 2 to the objection, and the second -- our
23 supplemental declaration is Exhibit 1 to the reply. Ms.
24 Priore's on the phone today and available to answer any
25 questions the Court might have.

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1 Your Honor, what this claim is really about is whether
2 or not GMAC Mortgage properly did its job as servicer of Mr.
3 Silber's mortgage loan. It is our contention that we did, that
4 there was multiple loan modification efforts that were
5 undertaken, that when paperwork was submitted by Mr. Silber to
6 substantiate a possible modification, what was submitted was
7 not sufficient to allow GMAC Mortgage, as servicer, to grant a
8 modification consistent with the guidelines that bind -- within
9 which it had to operate.

10 THE COURT: So what guidelines did it have to operate
11 under?

12 MR. WISHNEW: So specifically, Your Honor, we're
13 talking about the HAMP guidelines. And what's at issue is that
14 Mr. Silber had been receiving unemployment income, and -- at
15 the time that the modification was requested, and the HAMP
16 guidelines require there be evidence of nine months of
17 unemployment income, and what we received was short of that
18 nine months, and so we -- consistent with the guidelines, we
19 couldn't agree to a modification where the information that was
20 being provided was not consistent with the guidelines that were
21 outlined.

22 THE COURT: May I ask you this?

23 MR. WISHNEW: Sure.

24 THE COURT: So if a borrower is receiving state
25 unemployment benefits, and three months into receiving the

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1 benefits, they seek a loan modification, do they have to show
2 that they were assured of nine months of benefits from the
3 first time -- from the time they first received it or nine
4 months of benefits going forward from the time that they're
5 seeking the modification?

6 MR. WISHNEW: I would argue the latter, Your Honor.
7 If you look to --

8 THE COURT: Is that -- that's in the guidelines?

9 MR. WISHNEW: That is in the guidelines, and I'll
10 reference my reason. If you look to Exhibit T, to Ms. Priore's
11 declaration, docketed at 7979-23, specifically page 8 of the
12 guidelines, which has been stamped page 9 of 39 to the exhibit,
13 it says, "If the borrower receives public assistance or
14 collects unemployment; acceptable documentation includes
15 letters, exhibits, or a benefit statement from the provider
16 that states the amount, frequency, and duration of the benefit.
17 The servicer must determine that the income will continue for
18 at least nine months." So I think that phrase suggests that
19 it's nine months starting at the time of the modification
20 request.

21 THE COURT: Um-hum. May I ask this? At any point,
22 did the debtors provide Mr. Silber with a copy of the HAMP
23 guidelines? And I know, I read, I see that there are issues as
24 to when you received notice of what, whether he was told that
25 unemployment benefits could or couldn't be considered; but my

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1 specific question is -- and this I don't seem to -- was he
2 actually provided with a copy of the guidelines?

3 MR. WISHNEW: As Your Honor notes, we were -- I
4 believe our reply at paragraph 17 addresses that we informed
5 him of the requirements. I'm not certain whether we actually
6 provided him with a hard copy of the requirements. I would
7 need to go back and check.

8 THE COURT: Tell me again which exhibit has the HAMP
9 guidelines? I'm at the --

10 MR. WISHNEW: Yes, Your Honor. It's Exhibit T as in
11 Tom.

12 THE COURT: Okay, just a second. Just give me a
13 second.

14 MR. SILBER: Which document is that? Is that your
15 original complaint or your second reply?

16 MR. WISHNEW: First.

17 MR. SILBER: I mean, I'm sorry, your first objection?

18 MR. WISHNEW: It's the first one. Yeah.

19 THE COURT: Well, let's make sure that Mr. Silber has
20 what we're focusing on.

21 MR. SILBER: Would that be the Exhibit that has "HAMP"
22 on the -- across the top of it?

23 MR. WISHNEW: Yeah, hold on one minute.

24 MR. SILBER: Okay. No, that's fine. No, I know which
25 one you're talking about. Okay. I know what they're talking

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1 about.

2 THE COURT: You have it?

3 MR. SILBER: I don't require it, because it doesn't
4 pertain to me.

5 THE COURT: Okay. I just -- when I have a hearing and
6 the counsel is referring to a document, I want to be sure that
7 if the other side wants it, they have it in front of them.

8 MR. SILBER: I have -- I have it, Your Honor.

9 THE COURT: Okay. All right.

10 MR. SILBER: I do know -- I do know what they're
11 referring to.

12 THE COURT: Go ahead. Go ahead, Mr. Wishnew.

13 MR. WISHNEW: Your Honor --

14 THE COURT: What paragraph, what page?

15 MR. WISHNEW: Oh, I'm sorry, Your Honor. Yes. It's
16 page 8 of the supplemental directive, marked as 9 of 39.

17 THE COURT: Okay. And your focus --

18 MR. WISHNEW: It's the top -- very top of the page,
19 starting with, "If the borrower receives public assistance or
20 collects unemployment."

21 THE COURT: Okay. I see what you're talking about.

22 Let me ask this: Because one of the claims that Mr.
23 Silber asserts is breach of contract.

24 MR. WISHNEW: Yes, Your Honor.

25 THE COURT: And he refers, specifically, to the note.

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1 MR. WISHNEW: Yes, Your Honor.

2 THE COURT: What is the Trust's position -- and he
3 argues, I guess, both breach of contract and breach of covenant
4 of good faith and fair dealing.

5 MR. WISHNEW: Um-hum.

6 THE COURT: But both refer to a contract.

7 MR. WISHNEW: Um-hum.

8 THE COURT: What is the Trust's position as to whether
9 the HAMP guidelines are incorporated into the terms of the
10 note, expressly or by implication?

11 MR. WISHNEW: And up -- right.

12 THE COURT: Where's the note? Look at the note.

13 MR. WISHNEW: Sure. The note is Exhibit C, as in
14 Carl --

15 THE COURT: Okay.

16 MR. WISHNEW: -- to Ms. Priore's declaration.

17 THE COURT: Show -- let's make sure we're all looking
18 at the same thing. Show him --

19 Mr. Silber, do you know what I'm talking about, now?

20 MR. SILBER: That's the note that I'm disputing is not
21 the correct one, Your Honor. There's one that I included in my
22 reply, which is the correct note.

23 THE COURT: Well --

24 MR. SILBER: I believe --

25 THE COURT: I'm not -- I'm not getting into whether

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1 it's --

2 MR. SILBER: I believe the writing in the note's the
3 same.

4 THE COURT: Look, the typed text of the notes are
5 not -- don't differ.

6 MR. SILBER: Correct.

7 THE COURT: You have a dispute about endorsements.

8 MR. SILBER: Correct.

9 THE COURT: So am I correct that you do not dispute
10 the typed terms of the note?

11 MR. SILBER: Correct.

12 THE COURT: Got it. Okay.

13 So on this issue of whether the HAMP guidelines are --
14 should be incorporated within the terms of the note, what's
15 your position on that?

16 MR. WISHNEW: Our position is that there's nothing on
17 the face of the note that incorporates the HAMP guidelines.

18 (Pause)

19 THE COURT: If you look at paragraph 6, capital B.

20 MR. WISHNEW: Um-hum.

21 THE COURT: "If borrower defaults by failing to pay in
22 full any monthly payments, then lender may, except when limited
23 by regulations of the Secretary in the case of payment
24 defaults, require immediate payment in full of the principal
25 balance remaining due and all accrued interest." Well, let

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1 me -- hold on. And then it goes -- I'll leave some language
2 out.

3 MR. WISHNEW: Sure.

4 THE COURT: And then it says, in that same paragraph,
5 "This note does not authorize acceleration when not permitted
6 by HUD regulations."

7 MR. WISHNEW: Right.

8 THE COURT: So the reference to -- the references to
9 "the Secretary", who is that to?

10 MR. WISHNEW: So if you look at the sentence after the
11 one you just referenced, Your Honor, at the end of section
12 6B --

13 THE COURT: Yes.

14 MR. WISHNEW: -- of the note, it says, "As used in
15 the" -- sorry. "As used in this note, 'Secretary' means
16 Secretary of Housing and Urban Development or his or her
17 designee."

18 THE COURT: Okay. Who issued HAMP?

19 MR. WISHNEW: HAMP, I believe, was a Congressional
20 action, Your Honor.

21 THE COURT: No.

22 MR. SILBER: Your Honor, I think I can settle the
23 conf --

24 THE COURT: No. I'll give you a chance, Mr. Silber.

25 MR. SILBER: Okay. Okay.

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1 THE COURT: Isn't it the Department of Housing and
2 Urban Development that's issued the HAMP regulations and has
3 modified them from time to time?

4 MR. WISHNEW: On further --

5 THE COURT: I used to follow all the modifications.

6 MR. WISHNEW: Right, I --

7 THE COURT: I haven't, of late, but that was my
8 understanding.

9 MR. WISHNEW: I think --

10 THE COURT: If I'm wrong, you'll correct me.

11 MR. WISHNEW: I might have misstated that, Your Honor.
12 I believe your understanding is correct.

13 THE COURT: It was executive action, the HAMP program
14 was created by --

15 MR. WISHNEW: Right.

16 THE COURT: -- the Department of Housing and Urban
17 Development, and the regs have been modified from time to time.
18 That's why -- so let me ask the question -- and obviously,
19 "this note does not authorize acceleration when not permitted
20 by HUD regulations." That's why I asked my question, whether
21 the note incorporates the HAMP regulations as in effect from
22 time to time by virtue of paragraph 6B.

23 Well, so what I'm -- here's what I'm -- it's not
24 intended as a trick question. What I'm trying to figure out in
25 my mind --

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1 MR. WISHNEW: Sure.

2 THE COURT: Mr. Silber argues GMAC breached the
3 contract.

4 MR. WISHNEW: Um-hum.

5 THE COURT: He refers to the note.

6 MR. WISHNEW: Um-hum.

7 THE COURT: It does seem to me that the note -- not
8 crystal clear, but does seem to incorporate HUD regulations.
9 If HAMP or HUD regulations, okay, then I've got to look to
10 those, as well.

11 MR. WISHNEW: Um-hum.

12 THE COURT: Then the issue becomes, did GMAC comply
13 with the HUD regulations?

14 MR. WISHNEW: Um-hum.

15 THE COURT: You say they did.

16 MR. WISHNEW: Um-hum.

17 THE COURT: Mr. Silber says they didn't. Is that a
18 fair --

19 MR. WISHNEW: I would say that's a fair
20 characterization.

21 THE COURT: Okay. And so I need to know what your
22 position is -- may -- for purposes of deciding this motion, may
23 the Court consider the HAMP regulations as incorporated into
24 the terms of the note? I'm not asking you to decide for all
25 matters --

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1 MR. WISHNEW: No, no, I underst --

2 THE COURT: Otherwise you're going to wind up briefing
3 an issue --

4 MR. WISHNEW: Right, no.

5 THE COURT: -- and I don't think you want to.

6 MR. WISHNEW: Understood, Your Honor. I just want to
7 briefly --

8 THE COURT: I mean, you take the position you did
9 comply.

10 MR. WISHNEW: That's exactly right, Your Honor. I
11 mean, I think it is clear that we did comply, so I don't see
12 any reason why we shouldn't concede it, but I just want to make
13 sure that the language would be consistent with that. And I
14 think that, to the extent HAMP is a regulation issued by HUD,
15 and to the extent that there are two particular circumstance in
16 which the HUD regulations have to be considered by the lender,
17 then, yes, HAMP is incorporated.

18 And what I mean by that, Your Honor, is that -- it
19 says, "In many circumstance regulations issued by the Secretary
20 will limit lenders' rights to require immediate payment in
21 full. This note does not authorize acceleration when not
22 permitted by HUD regulations."

23 THE COURT: Let me make sure I'm not missing anything,
24 because in the first paragraph of Exhibit T, the HAMP program,
25 it refers to Treasury announced the modification, it doesn't

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1 say HUD. So I don't want -- I'm not trying to get you to agree
2 to something that you shouldn't.

3 MR. WISHNEW: You know, as Your Honor points out, it
4 does say -- again, referring to the first page of Exhibit T,
5 "As part of this plan the Treasury Department announced a
6 national modification program." Next sentence begins: "On
7 March 4th, 2009, the Treasury issued uniform guidance for loan
8 modifications across the mortgage industry." Following
9 sentence: "This supplemental directive provides additional
10 guidance to servicers for" --

11 THE COURT: Wait, I just -- let me stop you there. My
12 law clerk has just handed me a note that the HAMP Web site says
13 it is an official program of the Department of Treasury and
14 HUD.

15 MR. WISHNEW: That would be consistent with the
16 background -- the first --

17 THE COURT: Okay.

18 MR. WISHNEW: -- paragraph of the background.

19 THE COURT: All right. So I just wanted to look at
20 the Web site, but without the necessity of briefing --

21 MR. WISHNEW: Of course, Your Honor.

22 THE COURT: -- the issue, for purposes of this matter
23 only --

24 MR. WISHNEW: Yes.

25 THE COURT: -- may the Court consider the HAMP

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1 guidelines as incorporated into the note for purposes of
2 analyzing the breach of contract, breach of covenant, of good
3 faith and fair dealing claims?

4 MR. WISHNEW: Yes, Your Honor.

5 THE COURT: Okay. All right. That just makes it a
6 little -- I want to be sure I understand what -- because look,
7 in other matters, I've held clear there is no private right of
8 action under HAMP.

9 MR. WISHNEW: Right.

10 THE COURT: That's well established. But the issue of
11 whether a breach of contract claim can support a violation is a
12 different issue.

13 MR. WISHNEW: Um-hum.

14 THE COURT: Okay. All right. Go ahead.

15 MR. WISHNEW: Your Honor, I mean, we are comfortable
16 relying on our papers, both in the objection and the reply.
17 Unless Your Honor has other questions, I'm happy to defer to
18 Mr. Silber and address any points he raises.

19 THE COURT: All right. Let me -- I think I have some
20 more questions. Let me --

21 (Pause)

22 THE COURT: A focus of my consideration is whether
23 there are disputed issues of fact that cannot be resolved on
24 your current motion, the objection. Issues which may or may
25 not fall into that category are whether Mr. Silber provided

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1 satisfactory proof of unemployment income at various times,
2 because he had multiple work-out packages that he submitted.

3 He also raises the issues, which you really -- this
4 part of it, you don't dispute -- regarding the December 8th
5 2010 e-mail from the -- to the Assistant Attorney General of
6 Connecticut in which the GMAC employee stated that unemployment
7 income could not be considered in the review of a loan
8 modification. You don't dispute that that e-mail exists. What
9 you argue is that both before and after that e-mail, both
10 orally and in writing, GMAC advised Mr. Silber about what
11 evidence he would have to provide for GMAC to consider
12 unemployment income in evaluating a modification. Is that a
13 fair statement?

14 MR. WISHNEW: That's a fair statement, Your Honor.

15 THE COURT: The other -- before I let Mr. Silber
16 argue --

17 (Pause)

18 THE COURT: There are two causes of action that do not
19 appear to be addressed in the Trust's papers. One -- and this
20 relates to Mr. Silber's allegations regarding false
21 representations. And it seems to me there are three potential
22 causes of action that have to be examined: defamation, fraud,
23 and negligent misrepresentation, and the Trust didn't address
24 negligent misrepresentation in its papers. The other cause of
25 action that isn't addressed is the Connecticut Unfair Trade

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1 Practices Act.

2 It seems to me that all three -- when I say all three,
3 the breach of contract -- and I'm including good faith and fair
4 dealing because that falls within the breach of contract. The
5 breach of contract, negligent misrepresentation, Unfair Trade
6 Practices Act: all three of those hinge on the same facts, as
7 to which it appears to me that there are disputed issues. The
8 Trust comes forward with documents to support its arguments.

9 Mr. Silber, let me ask you this: you're not a lawyer,
10 correct?

11 MR. SILBER: No, sir.

12 THE COURT: Okay, so you did a good job with your
13 papers, okay?

14 MR. SILBER: Thank you.

15 THE COURT: But you didn't provide the Court with an
16 affidavit or a declaration, which is a sworn statement. Am I
17 correct that whatever factual assertions you put in your
18 response to the objection, you would be prepared to testify to,
19 under oath?

20 MR. SILBER: Yes, sir. I thought I included that in
21 my response to their objection, as well, underneath penalty of
22 perjury, to the best of my knowledge.

23 THE COURT: Okay.

24 MR. SILBER: I believe it's on the last page.

25 THE COURT: All right. I'm assuming -- I may --

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1 MR. SILBER: But I would do that today --

2 THE COURT: I may have missed it.

3 MR. SILBER: -- as well, Your Honor.

4 THE COURT: I was assuming that whatever you put in
5 here, that was a -- purports to be a statement of fact, that
6 you're prepared to testify under oath.

7 MR. SILBER: Yes, sir.

8 THE COURT: Okay. You know, there are some of the
9 claims that Mr. Silber asserts that appear to be barred by
10 statute of limitations. I'm going to hear Mr. Silber's
11 argument.

12 I'm mainly focused, Mr. Silber, on the breach of
13 contract claim, the negligent misrepresentation claim, and the
14 Connecticut Unfair Trade Practices Act claim. You can argue --
15 I'm not limiting your argument to that.

16 MR. SILBER: Right, we're talking about that right
17 now. I understand.

18 THE COURT: All right. It, frankly, seems to me, Mr.
19 Wishnew, that all three -- as I said, all three of those claims
20 hinge on the same facts. And while I haven't made a final
21 decision about it, I'm uncomfortable -- it appears to me, Mr.
22 Silber's entitled to an opportunity to testify from the witness
23 stand, give his testimony, have you cross-examine him if you
24 choose to cross-examine him, and then the Court decide those
25 claims with the factual record. It seems to me that -- if I

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1 were to hold an evidentiary hearing, Mr. Wishnew, who would
2 testify on behalf of the Trust, do you know? Do you know at
3 this point?

4 MR. WISHNEW: My instinct --

5 THE COURT: Most of these are relying on business
6 records, I think.

7 MR. WISHNEW: Yeah. My guess would be it would
8 probably be Ms. Priore --

9 THE COURT: Okay.

10 MR. WISHNEW: -- who would -- because much -- really,
11 her declaration is derived from the servicing notes which we
12 attached to the reply, and so she would -- and so her knowledge
13 would be based upon the servicing notes and she would interpret
14 the servicing notes to say, this is what happened on this day
15 based upon the contemporaneous recording put into the servicing
16 notes, based on my communication that either was had with Mr.
17 Silber or went out to Mr. Silber or the like.

18 THE COURT: Mr. Silber disputes the Trust's position
19 about what was said during the mediation in Connecticut. Who
20 appeared on behalf of GMAC in the Connecticut mediation? Do
21 you know?

22 MR. WISHNEW: I don't know offhand, Your Honor.

23 THE COURT: Mr. Silber?

24 MR. SILBER: Your Honor, nobody appeared in the
25 mediation. Every time they needed to step out, they stepped

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1 out of the room with the mediator as the only witness and made
2 a phone call.

3 THE COURT: It's not a witness. They -- GMAC had
4 somebody who just appeared by telephone?

5 MR. WISHNEW: That's right, Your Honor.

6 MR. SILBER: Not in the room during the time.

7 THE COURT: Yeah.

8 MR. SILBER: They kept stepping out of the room and
9 walking away.

10 MR. WISHNEW: What --

11 MR. SILBER: So we had no idea what was going on. It
12 wasn't like a conference call or a speaker-phone.

13 THE COURT: No, no, no. But he -- somebody --

14 MR. WISHNEW: There was a representative --

15 THE COURT: A representative --

16 MR. WISHNEW: -- on the phone.

17 THE COURT: -- was either in person or on the
18 telephone.

19 MR. SILBER: Not every time, Your Honor. Not every
20 time. There's two -- there's two times where mediation was
21 not -- was deemed to be not enforceable. They weren't able to
22 collect fees on that because they didn't bring the proper
23 documents to mediation, and GMAC wasn't re --

24 THE COURT: Well, there was also a time when you
25 didn't show up, either.

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1 MR. SILBER: Well, I gave the reason for that, Your
2 Honor. There was no further point to --

3 THE COURT: I'm not getting into that.

4 MR. SILBER: -- waste anybody else's time.

5 THE COURT: No, but you're saying that --

6 MR. SILBER: I also am not charging to be there.

7 THE COURT: But you're -- one of the arguably factual
8 disputes is to what was the mediator told by each side?

9 MR. SILBER: Correct.

10 THE COURT: Okay. And so, Mr. Wishnew, you may need
11 to call, figure out who was the representative who appeared for
12 the debtor at the mediation. It does seem to me, some of Mr.
13 Silber's assertions regarding the mediation are the same
14 underlying facts that are disputed with respect to the breach
15 of contract, Unfair and Deceptive Trade Practices Act, and
16 negligent misrepresentations claims. Okay?

17 It seems to me, Mr. Silber, if I decide -- what I'll
18 do is, I'm going to enter an order -- not today, but I'm going
19 to enter an order after this hearing, and if I conclude that we
20 need to have a factual -- an evidentiary hearing, you'll show
21 up? Is there anybody other than yourself who is testifying on
22 your behalf?

23 MR. SILBER: I think I can call the court-appointed
24 mediator.

25 THE COURT: You can't. There's -- mediators have a

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1 privilege. You can't, but --

2 MR. SILBER: Very well. I don't know. It would just
3 be me and my word --

4 THE COURT: Okay.

5 MR. SILBER: -- but I was there through the whole
6 thing.

7 THE COURT: Well, that's what happens in court
8 sometimes.

9 MR. SILBER: Yes, sir.

10 THE COURT: But, Mr. Wishnew, you may need to call
11 somebody to testify from the Trust's -- from the former
12 debtors' --

13 MR. WISHNEW: Um-hum.

14 THE COURT: -- standpoint --

15 MR. WISHNEW: Okay.

16 THE COURT: -- about that. Okay. Let me hear from
17 Mr. Silber, okay?

18 Go ahead, Mr. Silber.

19 MR. SILBER: Your Honor, it's my po --

20 THE COURT: You've got a lot of papers, so if you want
21 to do it from there, you can --

22 MR. SILBER: I'm just doing -- I'm only touching base
23 on what we touched base on so far, which is --

24 THE COURT: Okay.

25 MR. SILBER: -- the HAMP.

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1 THE COURT: That's fine.

2 MR. SILBER: Or the -- okay. It's my position, Your
3 Honor -- first of all, they replied to my reply, and I only got
4 that reply Monday afternoon, so I had no time to reply to that.
5 Since they --

6 THE COURT: Ordinarily, I don't allow a reply to a
7 reply, okay? But go ahead.

8 MR. SILBER: They replied to my reply.

9 THE COURT: They get to do that.

10 MR. SILBER: Okay.

11 THE COURT: So the way it goes, they file an
12 objection, you file your response, the get to reply. But go
13 ahead.

14 MR. SILBER: Based on that, Your Honor, underneath --
15 pursuant to Rule 15 of amended and supplemented pleadings, I
16 don't require any new evidence or argument to be brought
17 forward, just a few more complaints to be put onto the docket.

18 THE COURT: Well, all right --

19 MR. SILBER: And based on objections during a trial, a
20 party objects to evidence that's not within the issue raised in
21 the pleadings, the court may permit the pleadings to be
22 amended.

23 THE COURT: I don't, okay? You had to put -- what I
24 go by is what's in your -- I'm going to listen to you, okay?
25 But I start with your proof of claim --

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1 MR. SILBER: Correct.

2 THE COURT: -- and how that's been supplemented by --
3 or providing additional information to the Trust and the Court.
4 Okay? That's what the Court decides whether you've stated the
5 claim and whether I have to have an evidentiary hearing. But
6 why don't you tell me -- go ahead. Don't let me interrupt you.

7 MR. SILBER: Your Honor, this is just based off of,
8 they never filed the reply to my original complaint.

9 THE COURT: I -- but go --

10 MR. SILBER: That was stayed, and I couldn't amend it,
11 and now they're filing an objection underneath Section 2 of
12 Rule 15 saying that what I'm saying doesn't apply to those
13 laws. They're saying underneath a matter of Connecticut law --

14 THE COURT: Just make your argument.

15 MR. SILBER: Okay. A breach of fiduciary duty for the
16 same reasons as defamation, false representation --

17 THE COURT: They don't owe you -- they don't owe you a
18 fiduciary duty. They don't.

19 MR. SILBER: Okay. Defamation, as you already stated,
20 and then with the evidence they brought forward from the phone
21 logs, the phone calls in their latest reply, harassment.

22 THE COURT: Harassment?

23 MR. SILBER: Yes, sir. Unwarranted phone calls.
24 Countless phone calls meant to harass, frustrate, and wear down
25 the plaintiff's patience, the acts of -- the act of systematic

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1 and/or continuing unwarranted and annoying actions of one party
2 or group, including threats and demands.

3 THE COURT: Okay, I'm not going to permit that to be
4 asserted. Okay? You --

5 MR. SILBER: Very well. Def --

6 THE COURT: You could have asserted that long ago.

7 MR. SILBER: I had to wait for them to object to my --

8 THE COURT: No, you didn't.

9 MR. SILBER: -- complaint.

10 THE COURT: No, you didn't. If --

11 MR. SILBER: Very well.

12 THE COURT: If that was the basis for your claim, you
13 could have asserted that as the basis for a claim.

14 MR. SILBER: Okay.

15 THE COURT: Okay. The way it works in bankruptcy,
16 creditors get to file a proof of claim. I understand you don't
17 have a lawyer. I'm not holding you to the legal --

18 MR. SILBER: Oh, I --

19 THE COURT: -- technicalities.

20 MR. SILBER: I understand that, Your Honor. I
21 understand.

22 THE COURT: Okay.

23 MR. SILBER: I thought that this would be -- I
24 thought -- I'd have -- it's my own fault. I thought today was
25 counted as my court date, which would happen in my federal

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1 court, but it's being heard here, instead. So, this isn't --
2 we're at -- we're not at this step, yet. I understand that.

3 THE COURT: Okay.

4 MR. SILBER: Or maybe it will be permitted in the
5 future.

6 THE COURT: All right.

7 MR. SILBER: No problem.

8 THE COURT: Go ahead.

9 MR. SILBER: My position is that I did everything I
10 could to work with them, and you can see the countless letters
11 and the countless attempts. The reason why there was multiple
12 applications sent month after month is because one day I was
13 speaking to one person and the next day I was speaking to
14 another person.

15 There's also the misconception that they keep
16 referring to HAMP. There's FHA HAMP, which is different. And
17 FHA HAMP does show that I only have to show reasonable
18 assurance of when the time of the unemployment benefits started
19 until it's over. Reasonable assurance. My declaration is they
20 had no methodology to determine reasonable assurance when they
21 thought they only had to be nine months, and their applications
22 were nine months when, indeed, it was twelve months.

23 Now, point be told, I showed them the letters and the
24 extensions that are acceptable as reasonable assurance. I
25 showed them the extensions from the state. I showed them

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1 letters from the Massachusetts Department of Unemployment,
2 which has been included in these replies that they submitted as
3 evidence. Reasonable assurance is just that -- reasonable
4 assurance.

5 THE COURT: Well, I mean --

6 MR. SILBER: So --

7 THE COURT: Go ahead.

8 MR. SILBER: They can't -- it's -- with all due
9 respect, whatever GMAC's position is on what I need to give
10 them has very little merit or relevance, it's what HUD's
11 requiring. And in my position, they knew the requirements for
12 FHA HAMP, they knew the requirements for HAMP, they knew the
13 requirements for this modification, and this modification, and
14 each time they put me into one, they put me into one that I
15 knew that they knew I would be disqualified for.

16 There is plenty opportunity underneath HUD mortgage
17 letters that shows that they have to do X, Y, and Z, and they
18 didn't. It shows that there's -- whenever a stipulation isn't
19 met -- let's say it was nine months of unemployment and I am
20 showing them eight months, Connecticut mediation Senate House
21 Bill 5270, An Act Concerning Foreclosure Mediation, says
22 demonstrating reasonable efforts by the mortgagee or its agent
23 to obtain a waiver of those restrictions. We have something
24 called a variance compliance request that FHA has.

25 And that's just it. When there's a thirty-one percent

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1 debt-to-income or a fifty-five percent back income, those are
2 just guidelines.

3 THE COURT: Let me ask you this: what is your
4 position, if your unemployment insur -- payments were included
5 in your income, would you have satisfied the thirty-one percent
6 standard in HAMP?

7 MR. SILBER: Including the waterfall program, it would
8 have been thirty-three percent, in which case a variance
9 compliance request could have been filed. And according to
10 FHA, they went up to forty-five percent at times. They were
11 not using my unemployment as income when they sent it over.
12 They were only using the rental income I was getting from my
13 girlfriend at the time, the mother of my children at the time.
14 That's all that they were using.

15 And then, we also have, not only did they hinder me
16 from participating in these programs, but I have cut and dry
17 ev -- well, I have all the evidence today about the EHLP
18 program that doesn't have to do the FHA or HUD. It's a
19 Connecticut CHFA program, only. And they gave them the wrong
20 information; and the dollar amount they told them was about
21 4,000 dollars more than what the program allowed, and it
22 terminated me from participating in that program.

23 THE COURT: So that's the issue of whether you owed
24 more than 50,000 dollars, right?

25 MR. SILBER: Your Honor, the program was they would

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1 pay the past due arrearages, and then they would help you with
2 the payment. There's a letter

3 THE COURT: But arrearages

4 MR. SILBER: Correct.

5 THE COURT: So, look, as I understand your dispute
6 with the Trust, you have only con in determining whether
7 you're under that it's a 50,000-dollar threshold, right?

8 MR. SILBER: I had an approval yes, sir.

9 THE COURT: Okay. The issue there is whether they
10 look at only unpaid principal or unpaid principal plus all
11 accrued interest. The Trust's position, as I understand it,
12 was that with unpaid principal and interest the amount that you
13 owed exceeded 50,000 dollars. Do you agree or disagree to that
14 as a factual matter?

15 MR. SILBER: Disagree. Disagree.

16 THE COURT: Okay.

17 MR. SILBER: And I think I think only because they
18 determine a portion of your mortgage payment to be paid. They
19 determine that my payment would be 878 and CHFA would pay
20 1,112. The minimum requirements for that program is they have
21 to be able to help you for six months. So when you take the
22 amount that they were going to pay, plus the amount that they
23 gave them, that exceeded the 50,000 dollars by 494 dollars.

24 That money that they gave them, the 43,000, Your
25 Honor, included a payment that was due for September when they

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1 told them this on August 25th. That payment was not due on
2 that date, it's not past due until the 15th, and that amount
3 doesn't get added into what's past due until the 25th in their
4 system. Their evidence that they provided shows that. Late
5 payments from the month that are due on the 1st isn't even
6 added to the 25th, so they double-dipped. Let alone, the
7 reinstatement figure given to CHFA specifically asked total
8 past due less fees. They included an inspection fee, which I
9 had no idea, which I want an itemization on; advances for 15/7,
10 which I have no idea, and I'd like an itemization on.

11 THE COURT: How much were the amount of the advances?

12 MR. SILBER: 1,577.30.

13 THE COURT: How were your property taxes being paid?

14 MR. SILBER: Through escrows through them. And they
15 actually there's no dispute with the escrow, Your Honor.
16 The escrow's included in the past due amount up here. The
17 escrows is included in the total amount past due less fees.

18 THE COURT: I don't know, I'm not I'm speaking
19 hypothetically now.

20 MR. SILBER: I have the documentation to show you.

21 THE COURT: I'm not speaking about the specific facts
22 in your matter. A mortgagee ordinarily advances past due taxes
23 to avoid a lien, and then that gets added to the amount of
24 mortgage debt. Is that what is at stake here at issue

25 MR. SILBER: As of

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1 THE COURT: with respect to the advances?

2 MR. SILBER: I'm disputing the escrow because they're
3 already putting in the total fees. Here's a declaration they
4 gave me as of 8/9/2011, and it shows the past due amount is
5 2,637, and then what you add in the escrow of 9,443, it starts
6 putting us closer to that ballpark with the additional pre-
7 accelerated late charges. I have no idea what that is. That
8 puts us closer that puts us at the 37,000-dollar mark. If
9 you take the 37,000 plus the six payments that CHFA would have
10 paid, that only puts me at 44,000 dollars as far as that 50,000
11 dollars is concerned.

12 They also said there's no guarantee I would pay that.
13 However, we know the year before that I paid 955 for six months
14 in the forbearance plan.

15 THE COURT: All right. I'm not look, I'm not
16 resolving factual issues today.

17 MR. SILBER: Okay. All right, I'm sorry. I

18 THE COURT: I'm trying no, no, no, that's fine.
19 Your argument's fine.

20 MR. SILBER: There's also

21 THE COURT: Look, Mr. Silber, I'm trying to understand
22 I want to be sure I understand what are the factual issues.
23 That if we go forward with an evidentiary hearing, what is it
24 that I'm going to hear about, okay. That's what I'm trying to
25 do now. I'm not deciding

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1 MR. SILBER: Okay.

2 THE COURT: I mean, I the fiduciary duty point that
3 I know the law, they don't owe you a fiduciary duty. Okay. So
4 you're not adding that to your argument.

5 MR. SILBER: I don't mean to pick at it.

6 THE COURT: Then don't.

7 MR. SILBER: And if your word is final, I don't want
8 to argue.

9 THE COURT: Let's go on.

10 MR. SILBER: Okay, sorry.

11 Also in the total past due fees, they included that
12 September payment which wasn't due at that time.

13 THE COURT: Go ahead.

14 MR. SILBER: Let alone they included it again, because
15 CHFA specifically asked next due amount PI, next due amount
16 PITI 1990.80, which was my next payment. So they added it in.

17 There's also foreclosure advances in the amount of
18 1,991. But CHFA specifically makes mention that when they
19 asked for the past due arrearages there may be additional fees,
20 reasonable attorney fees, because they weren't they weren't
21 determining that these fees were valid. And as we know, the
22 fees that the attorneys asked for was not awarded in full by
23 the end.

24 At this point there were four mediation sessions, 250
25 dollars a session. Two of those mediation sessions were not

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1 awarded because they weren't bringing the proper documents
2 according to Senate House Bill 5270. Those proper documents
3 also kept me in the dark of what was past due, what the total
4 amount was. With all the effort I put in to get a modification
5 and some help, if I knew 494 dollars was all it would have
6 taken, I would have paid it easily. Why wouldn't I? And they
7 hindered me from day one and cost me the opportunity

8 THE COURT: Okay, calm down. Calm down.

9 MR. SILBER: I'm sorry.

10 THE COURT: No look

11 MR. SILBER: There's further

12 THE COURT: Look, I know this is important to you, and
13 it's important to me.

14 MR. SILBER: It's very important.

15 THE COURT: Okay. I want you to understand that.

16 MR. SILBER: Your Honor, the EHLF program would have
17 brought my mortgage current. Whether they can say I couldn't
18 make payments is not their concern. Payments are being made
19 and the mortgage is current. They make an argument there's no
20 guarantee I can pay it, but history shows I paid 955 in one of
21 their temporary forbearance plans. So I could easily pay 878.
22 I have my documents today to show I was on unemployment until
23 July of 2011.

24 THE COURT: Are you working now?

25 MR. SILBER: Yes, sir. I still couldn't find a job in

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1 the auto business, I started my own business, Your Honor.

2 THE COURT: Okay.

3 MR. SILBER: I'm not happy about being on unemployment
4 that long. And, for the record, I paid my mortgage in full
5 from February of 2009 to November of 2009 on my savings alone.
6 I didn't even start asking for unemployment until August,
7 because I was embarrassed. And I didn't ask for help from the
8 bank until I couldn't do it anymore.

9 Upon completion of the EHLF program, Your Honor, CHFA
10 had programs called Connecticut Families First. And I have
11 information on that today if anybody wants to disregard it or
12 you're telling me I might not need it. But there's a program
13 called Connecticut Families First. That program's no longer
14 valid. And what it was, it was a program that was taking your
15 prime mortgage FICO score before your financial hardship, where
16 mine was about an 800. They were taking that, they were
17 redoing people's loans through local banks in Connecticut.
18 CHFA understood how impossible it was for FHA mortgages to get
19 modifications because of my accusations of FHA insurance
20 capitalization.

21 They were taking

22 THE COURT: Tell me this let me interrupt you. Was
23 foreclosure completed on your house?

24 MR. SILBER: No, Your Honor.

25 THE COURT: Are you still in it?

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1 MR. SILBER: I am, Your Honor.

2 THE COURT: Okay.

3 MR. SILBER: But I'm past due, and I get a payment
4 booklet from Ocwen for 370,000 dollars, and it goes up 3,500 a
5 month.

6 THE COURT: Has there ever been a mod after what
7 you're fighting about here, has your loan ever been modified?

8 MR. SILBER: No, Your Honor, I'm not I can't
9 qualify for any programs. The only program that would even
10 get me close, because the dollar amount's so far out of whack
11 would be a streamlined finance, but you can't be past due more
12 than twelve months.

13 THE COURT: How much are your current arrears,
14 approximately?

15 MR. SILBER: What do I owe?

16 THE COURT: Yeah.

17 MR. SILBER: Oh, I got a letter yesterday from Ocwen
18 bank. They've stopped sending me a payment, and they're just
19 asking for the full dollar amount in full. As of 2/16/2015,
20 Your Honor, 353,484 dollars.

21 THE COURT: That's the total?

22 MR. SILBER: That's the total, they don't even send me
23 a requested payment. This is how much I need.

24 THE COURT: How much were you in arrears on mortgage
25 payments, not what the total amount total balance due is, do

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1 you know, approximately?

2 MR. SILBER: I have a principal balance of 234, that's
3 pretty similar to what the refinance was when I first signed
4 the papers

5 THE COURT: Right.

6 MR. SILBER: in 2008.

7 THE COURT: How many months have you missed?

8 MR. SILBER: As of today?

9 THE COURT: Yeah.

10 MR. SILBER: Seventy-eight months minus two months
11 that they took out for the forbearance plan. And then there's
12 a 1,750 credit that was inherited.

13 THE COURT: Okay.

14 MR. SILBER: But there's no programs that I qualify
15 for. I understand your question.

16 Anyway, upon comple

17 THE COURT: Look, I'm just trying to it doesn't
18 bear specifically on the claim that you've asserted here, but

19 MR. SILBER: I just lost friends over this that

20 THE COURT: I wanted to understand what your situation
21 is.

22 MR. SILBER: My situation is I'm buried in this house
23 with my investments.

24 Now, they've also made the declaration that because I
25 fought and I had said that I wanted to go into this house, and

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1 take my children out of a bad neighborhood, there's no reason
2 why I would have rescinded the note had I known I was doing
3 business with GMAC in 2008. But they're not understanding that
4 this is a refinance. I actually bought the house in 2006, put
5 all my savings into in 2006 --

6 THE COURT: -- Okay.

7 MR. SILBER: -- and it wasn't even an FHA loan. It was
8 with Webster Bank, Your Honor.

9 THE COURT: All right.

10 MR. SILBER: Now, back to the EHLF program, I'm sorry,
11 because it's not just the EHLF program that they cost me. Upon
12 completion of this program Connecticut Families First CHFA had
13 programs where they were taking people away from these big FHA
14 banks, Wells Fargo, all the big ones. And there were internal
15 banks such as Hartford Federal Credit Union, Webster Bank, who
16 my loan was with before, and they were taking these FHA loans
17 and giving them internal loans using their prime FICO score
18 before their hardship. Rates were as low as 3.75 percent.
19 They were extending loans to forty percent. They are forgiving
20 them. The only requirement was your mortgage needed to be
21 current.

22 THE COURT: Can I ask you this? Is there a recent
23 appraisal of your home?

24 MR. SILBER: No. Even the appraisal they gave at the
25 time of the foreclosure wasn't even accurate. It's like an '82

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1 station wagon and third driveway. There's no recent appraisal,
2 Your Honor. If you're asking what I think it's worth, I'd say
3 190,000 dollars. It's maybe gone up 10,000 since 2012.

4 THE COURT: All right.

5 MR. SILBER: And I've maintained the property and kept
6 it, because I have no I have no

7 THE COURT: All right. Let's go back to the specific
8 is there any additional argument you want to make?

9 MR. SILBER: The EHLP program, Your Honor, again,
10 isn't just -- I don't want to fixate on oh, it was 50,000
11 dollars. It was a way to bring my mortgage current, which
12 would have entitled me to further privileges or programs to
13 participate in. And the only guarantee would be I wouldn't be
14 standing here right now talking to you, as lovely as your
15 courtroom is. I wouldn't be here, I'd be doing business with
16 Webster Bank, making modified payments without all this all
17 this going on.

18 THE COURT: Okay. Anything else you want to

19 MR. SILBER: As far as all the other complaints?

20 THE COURT: Yeah.

21 MR. SILBER: Your Honor, I think the bank note. I
22 know you said you don't like to touch base on the bank note,
23 but the bank note, itself, has an illegal transfer on it. And
24 I don't it's my position that

25 THE COURT: I

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1 MR. SILBER: Your Honor

2 THE COURT: You've got an uphill road, I'm not
3 deciding it now. But

4 MR. SILBER: The bank wasn't determined transferred,
5 the bank was the bank note was canceled. When they won the
6 motion for summary judgment, they gave a different bank note to
7 the judge. Judge Robaina made because I didn't have a copy
8 of the original bank note, which I submitted, it shows right
9 there that my full intent was to do business with Wells Fargo,
10 not GMAC. That's why they put Wells Fargo in there.

11 Now, I refinanced my loan, because it was going to
12 FHA. You had FHA insurance. There

13 THE COURT: Why don't you address any other issues
14 that you want besides that. I understand, I've read your
15 argument with respect to the validity of the note, and the
16 endorsements. But I any other arguments you want to raise?

17 MR. SILBER: Yeah. All the arguments they're making
18 in their response to my complaint is contradicted by the phone
19 records that they they kept saying unemployment couldn't be
20 used. They're saying, they only said it that one time, but
21 their phone records their phone records, Your Honor, in
22 their recent reply shows that they were still saying that all
23 the way to 2012.

24 They weren't saying my unemployment was insignificant.
25 They kept saying unemployment cannot be used as verifiable

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1 income with an FHA loan. And that's incorrect. The HUD says
2 that it can, and my bank note says they're bound by HUD. And
3 they didn't take advantage

4 THE COURT: Well, HUD says it can if you provide
5 evidence that it's that it's

6 MR. SILBER: Reasonable assurance.

7 THE COURT: will be in place for nine months.
8 That's the HUD. That's HAMP.

9 MR. SILBER: It's actually well, HAMP is nine
10 months, which my house is FHA, so it's FHA HAMP. So reasonable
11 assurance for twelve months. But because they didn't they
12 never even tried to apply for that. Had they sent them the
13 letter for eight months, and filed a variance compliance
14 request

15 THE COURT: Well, you've got to get it for them, not
16 they get it for you. I mean

17 MR. SILBER: I got to get what, Your Honor?

18 THE COURT: You got to provide them with evidence
19 regarding your unemployment.

20 MR. SILBER: I

21 THE COURT: They don't have to affirmatively go out

22 MR. SILBER: Oh, I did, Your Honor. I'm not asking

23 THE COURT: I understand the issue as to whether
24 there's an issue that the Court will have to decide, whether
25 you sufficiently com satisfactorily complied with whatever

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1 the applicable law was with respect to establishing
2 unemployment. I understand your position.

3 MR. SILBER: All right.

4 THE COURT: And I understand their position. I'm not
5 resolving it today. Okay.

6 MR. SILBER: I understand that.

7 My point was is that once they have the packet from
8 me, and they determine unemployment's only eight months, or
9 whatever they're saying it was, or DTI, or debt to income, or
10 whatever, there's an avenue where they can file a variance
11 compliance request to get around those guidelines through FHA,
12 and they're bound by that by the act of concerning a
13 foreclosure. They're supposed to do this stuff. And FHA
14 requires it.

15 THE COURT: The issue of it's not clear to me, Mr.
16 Silber, that they're required to seek a variance.

17 MR. SILBER: According to Connecticut

18 THE COURT: Don't I don't want to hear argument
19 about it now. Okay.

20 MR. SILBER: Okay.

21 THE COURT: It's not I'm not ruling one way or the
22 other about it. If you complied with the applicable
23 guidelines, and Mr. Wishnew's going to tell me about FHA HAMP,
24 if there is such a thing

25 MR. SILBER: I have I have the HUD note I have

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1 the HUD

2 THE COURT: Okay.

3 MR. SILBER: released statement for that FHA HAMP,
4 Your Honor.

5 THE COURT: I don't I haven't seen anything that
6 establishes an affirmative obligation on the mortgagee or the
7 loan servicer to seek a variance. If you've complied with
8 applicable regulations, that's one thing. Okay. I'm not
9 deciding any of that today, okay.

10 Let me just because we need to finish up. Are
11 there any other legal issues that you want to address?

12 MR. SILBER: I mean, just legal issues, just all their
13 arguments are incor I have

14 THE COURT: Okay. I've read all the papers. I
15 understand you're not represented by a lawyer, but you filed a
16 lot you filed a lot of papers, and I understand your
17 arguments.

18 Mr. Wishnew.

19 MR. SILBER: I have the forbearance plan as well, Your
20 Honor. I'd like to submit it.

21 THE COURT: I know. And there I understand what the
22 issues are about the forbearance plan. And they incorrectly
23 returned a payment, you argue, that wasn't corrected for a
24 while. They argue it was corrected immediately. I understand
25 that issue.

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1 MR. SILBER: Their phone records show it wasn't
2 corrected for a while. The records they presented in the their
3 last reply.

4 THE COURT: Okay. All right.

5 Mr. Wishnew, what about are there different
6 guidelines for loan modification that are applicable to Mr.
7 Silber's loan? Was it an FHA loan, FHA guaranteed loan?

8 MR. SILBER: Yes.

9 (Pause)

10 THE COURT: Mr. Silber, was it FHA guaranteed loan?

11 MR. SILBER: Yes, sir, it was an FHA loan. I have the
12 mortgage letters that show the outlines for FHA HAMP, opposed
13 to the HAMP itself.

14 THE COURT: Why don't you bring it up.

15 MR. SILBER: Yes, sir.

16 THE COURT: Let me just look at it. Okay.

17 MR. SILBER: Yes, sir. Here's one mortgage letter

18 THE COURT: I just want to see the HAMP. The FHA

19 MR. SILBER: These are all concerning

20 THE COURT: Yes.

21 MR. SILBER: FHA. So here's the FHA HAMP
22 guidelines, and here's some here's the different guidelines
23 between what the HAMP is, Your Honor. And it will show you

24 THE COURT: Okay.

25 MR. SILBER: the unemployment is supposed to be

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1 twelve months, not nine months.

2 (Pause)

3 THE COURT: Mr. Silber, just come back up for a
4 second. Show me with respect to unemployment insurance, where
5 is that -- unemployment payments, where is that covered in the
6 FHA HAMP.

7 MR. SILBER: Well, I have a letter from a HUD
8 representative, I have an e-mail I included as an exhibit, Your
9 Honor. It shows them telling Lisa Pirot (ph.) of Connors &
10 Larson's (ph.) office, that unemployment can be used in the
11 prior installments. My arguments is that they kept saying
12 unemployment couldn't be used.

13 THE COURT: Well, that's all right.

14 MR. SILBER: Okay. Well, as

15 THE COURT: You told me that the FHA HAMP standard is
16 different. It only requires a reasonable assurance, not nine
17 months.

18 MR. SILBER: That's correct, I'll get to it, it's in
19 here, Your Honor. I'm sorry

20 THE COURT: That's what I was specifically asking
21 about.

22 MR. SILBER: It's underneath the underwriting.

23 THE COURT: Okay. If you can't find it now, that's
24 okay. We'll have to get it resolved.

25 MR. SILBER: Was the letter from HUD, the Lisa Pirot

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1 had sent, would be dismissed as hearsay.

2 THE COURT: No. Do you have a letter, you want to
3 show it to me?

4 MR. SILBER: I do. I'll get it for Your Honor. And
5 I'll look through this

6 THE COURT: This is not an evidentiary hearing today,
7 so I'm not ruling on evidence

8 MR. SILBER: Okay. It's just it's outlined what's in
9 this packet

10 THE COURT: Okay.

11 MR. SILBER: I'll find this in a second for you.

12 THE COURT: All right. Mr. Wishnew, can you shed any
13 light on this issue?

14 MR. WISHNEW: Your Honor, looking at both the note and
15 the mortgage, I don't see any specific language about this
16 being an FHA guaranteed loan. With regards to whether if it's
17 an FHA HAMP is it different from HAMP, I'm not aware that it's
18 different. And with regards to Mr. Silber's argument that even
19 if there are distinct guidelines, one guideline is nine months,
20 another is twelve months, I think that our argument is still
21 the same, if he couldn't provide

22 THE COURT: I understand. But his oral argument

23 MR. WISHNEW: Sure.

24 THE COURT: was that FHA HAMP guidelines only
25 require a reasonable assurance, not nine months of

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1 unemployment.

2 MR. WISHNEW: I thought his testimony was reasonable
3 assurance of twelve months.

4 THE COURT: Well, it wasn't testimony.

5 MR. WISHNEW: Oh, I'm sorry.

6 THE COURT: It wasn't testimony.

7 MR. WISHNEW: His argument was

8 MR. SILBER: Here you go, Your Honor.

9 THE COURT: All right. I'll give these back to you.

10 MR. SILBER: It's a little shaky, I'll find the actual
11 copy of it right here for you.

12 THE COURT: What Mr. Silber has handed to me

13 MR. SILBER: I have it, Your Honor. I have the
14 original from the Web site.

15 THE COURT: Okay. Is ECF docket number 7979-19, an
16 exhibit to Exhibit P to the Priore declaration, page 14 of
17 21. And it's specifically pointing to a question, and the
18 answer to it.

19 "How long must unemployment benefits last to be
20 considered income?"

21 "Unemployment income must be documented with
22 reasonable assurance of its continuance for at least twelve
23 months."

24 That's what it says.

25 Let me give this back to you. Okay.

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1 MR. SILBER: Okay.

2 THE COURT: I'm not going to resolve this issue today.
3 I think it's going to take me a little time, Mr. Silber, to go
4 through. And I think what will happen is the Court will
5 resolve some of the issues of this claim objection in writing.
6 As to others, it seems to me that there are disputed issues of
7 fact as to which I'd need to have an evidentiary hearing.

8 On this issue of consideration of unemployment
9 insurance payments uninsurance (sic) payments
10 unemployment insurance payments, before the evidentiary hearing
11 you ought to seek to resolve, Mr. Wishnew, if it's an FHA
12 guaranteed loan -- in which case the FHA HAMP guidelines would
13 apply -- and how they differ.

14 You know, in one respect I'm not making a
15 determination about it, Mr. Silber, but one respect seems to
16 work against you because the HAMP guidelines were nine months,
17 this is FHA HAMP twelve months.

18 MR. SILBER: Your Honor, it was my position I could
19 show twelve months reasonable assurance. And when I pointed
20 that out that's when they began saying unemployment cannot be
21 used at all. That's my argument.

22 THE COURT: All right. So once I issue an order,
23 let's assume I'm going to schedule an evidentiary hearing.
24 What hours do you work, Mr. Silber, I want to try to
25 inconvenience you as little as possible.

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1 MR. SILBER: Your Honor, this is the utmost important
2 thing in my life right now.

3 THE COURT: I understand

4 MR. SILBER: So whatever time I'll be there.

5 THE COURT: Are you self-employed now? Is that --

6 MR. SILBER: Yes, sir, I work for myself. I go to
7 Oklahoma March 27th till April 8th, I believe let's just
8 call it March 20th to April 10th I'll be in Oklahoma.

9 THE COURT: I'm not sure when I'm going to get the
10 order out.

11 Let's assume that I conclude we need to have an
12 evidentiary hearing, I want to get this resolved reasonably
13 promptly, Mr. Wishnew.

14 MR. WISHNEW: Um-hum. Absolutely, Your Honor.

15 THE COURT: You should confer with Mr. Silber. It
16 seems to me in all likelihood we're talking about a three-
17 witness hearing: Mr. Silber and Ms. Priore, and whoever was
18 the representative in the mediation.

19 MR. SILBER: Your Honor, why would Ms. Priore have any
20 relevance, I never spoke to her

21 THE COURT: Because she could

22 MR. SILBER: she never handled my claim, Your
23 Honor.

24 THE COURT: But she can a lot of what the Trust
25 relies on are business documents, records. And they're

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1 entitled I won't get into the I can't I can't give you
2 legal advice.

3 MR. SILBER: I understand.

4 THE COURT: It has to do with

5 MR. SILBER: I'll have a chance to argue the validity
6 of

7 THE COURT: No, it has to do with authenticating
8 business records. The documents

9 MR. SILBER: Authentication.

10 THE COURT: Yes.

11 MR. SILBER: Not just some phone record they could
12 give me willy-nilly.

13 THE COURT: So they have loan servicing notes as part
14 of their business records. And the Court has admitted them in
15 other proceedings.

16 You may be able to resolve some of those issues with
17 Mr. Silber to authenticate documents. But what I want to
18 happen is once I've entered an order ruling if I schedule an
19 evidentiary hearing, you and Mr. Wishnew should discuss
20 scheduling. It sounds to me that this is a three-evidence
21 three-witness hearing, and that an afternoon will be
22 sufficient. So

23 MR. SILBER: Do we know which issues we're talking
24 about?

25 MR. WISHNEW: That will be defined by the judge's

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1 order.

2 THE COURT: We will -- that will be clear in the order
3 that I

4 MR. WISHNEW: He's going to issue an order and he'll
5 define the specific issues.

6 THE COURT: I'm going to issue an order. Okay? So
7 you know, we're not scheduling it till I issue an order. Okay.

8 MR. SILBER: So you're going to issue an order, Your
9 Honor. And in my claim or my in my complaint, so you're
10 going to determine what has no validity, and what does.

11 THE COURT: Correct. That's correct.

12 MR. SILBER: Okay. So, but my only

13 THE COURT: When I say what has validity

14 MR. SILBER: Well, what has

15 THE COURT: What is sufficient to go to an evidentiary
16 hearing because there were disputed issues, or because I can't
17 resolve the legal issue based solely on the papers. So you'll
18 know you're not going to go into this blind, you'll know
19 what you have to prepare for.

20 MR. SILBER: Well, it does seem that some of the
21 issues that they objected to, we didn't touch base on.

22 THE COURT: I'm going to decide them on I got your
23 arguments, and their arguments in the papers, and I'll resolve
24 them. Some of these are pure issues of law, statute of
25 limitations issue, some other issues, I'll resolve.

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1 The ones I've already indicated which are the
2 issues that I've got to decide whether you're entitled to an
3 evidentiary hearing because of factual disputes: breach of
4 contract, negligent misrepresentation, Connecticut Unfair
5 Deceptive Trade Practices Act, okay. We'll go forward with a
6 hear you'll know what you have to prepare for.

7 Mr. Wishnew, it seems to me that we're talking about
8 an afternoon.

9 Is afternoon or morning better for you?

10 MR. SILBER: Morning's better, Your Honor, because I
11 can get on a train at 6:30 and be here for 9:30 well

12 THE COURT: Okay. We will try and do

13 MR. SILBER: 10:15 it looks like.

14 THE COURT: Mr. Wishnew, and he can talk with my law
15 clerks about scheduling. We'll find a day where I don't have a
16 hearing in the morning. We'll schedule an evidentiary hearing,
17 a date that's convenient for both of you, and the other
18 witnesses. Okay. And that's how we're going to proceed.
19 Okay.

20 MR. SILBER: So we're not going to talk about the bank
21 note at all, you're going to make a decision on that based on
22 the information already presented?

23 THE COURT: I'm going to resolve all the other issues
24 based on the papers I have before me. Okay. And I'll issue a
25 written order, you'll know exactly what where we're going

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1 from here. Okay.

2 MR. SILBER: I have new information regarding the bank
3 note, Your Honor, can I submit that or no?

4 THE COURT: No. Well, tell me what it is?

5 MR. SILBER: It's the Uniform Commercial Code that
6 shows the difference between transferring and canceling. And
7 it shows my right of rescission when those aren't followed.

8 THE COURT: You don't have the right to rescind. They
9 can as a matter of law, the mortgagor has a right to
10 transfer your note and you have no say over it. Okay. It's as
11 simple as that.

12 MR. SILBER: He didn't transfer it, Your Honor, they
13 canceled it.

14 THE COURT: You have something that says canceled?

15 MR. SILBER: Yes, Your Honor. I have the bank note,
16 it says canceled right on it.

17 THE COURT: Let me see it.

18 MR. SILBER: That's the whole issue, Your Honor. It's
19 not what I signed. I signed to do business with Wells Fargo
20 not GMAC. And they canceled it without my knowledge. They
21 said that this was the note I signed at sorry, I don't mean
22 to be up here yelling at you, I'm sorry.

23 They said that that's

24 THE COURT: That's an endorsement. Your note

25 MR. SILBER: That's not the original note, Your Honor.

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1 THE COURT: Stop. Your note is with Norwich
2 Commercial Group. Norwich Commercial Group can assign the
3 note.

4 MR. SILBER: Not if they've already assigned it to
5 Wells Fargo, Your Honor. There has to be a

6 THE COURT: All right.

7 MR. SILBER: transfer back, don't you think?

8 THE COURT: Take it back.

9 MR. SILBER: Can I show you the original bank note?

10 THE COURT: Take it back. I understand about
11 endorsements. I know all about the law of endorsements. Okay.
12 I'm going to resolve the issue of who is the noteholder. Okay.
13 Don't express your exasperation at me.

14 MR. SILBER: Sorry. I'm sorry. It's just not the
15 correct bank note.

16 THE COURT: When you appear in my court I will let you
17 make your arguments, I will let you testify. If you're unhappy
18 with my rulings, that's the way it goes. Okay. So

19 MR. SILBER: Yes, Your Honor.

20 THE COURT: I understand the issues from reading
21 the papers about the endorsements on the note. Your note was
22 not with Wells Fargo; your note indicates who the mortgagor
23 was.

24 MR. SILBER: Can I show you the original note

25 THE COURT: No.

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1 MR. SILBER: where it shows Wells Fargo? You asked
2 me for the note that was canceled, Your Honor. I have the
3 original note that says it was Wells Fargo.

4 THE COURT: Let's see the original note.

5 MR. SILBER: Thank you, and I apologize.

6 THE COURT: The mortgagor is indicated in the first or
7 second line of the note, not in the endorsement.

8 MR. SILBER: Sorry. I'm not disputing that.

9 THE COURT: You have no control over who they assign
10 the note to, cancel assignments, reassign it.

11 MR. SILBER: There still has to be a correct paper
12 trail, no?

13 THE COURT: Let's see.

14 MR. SILBER: There's three document there's one
15 more documentation

16 THE COURT: Stay here. Stay here.

17 MR. SILBER: Sorry. And then it shows at the time of
18 close

19 THE COURT: Stop. You are showing me a note that
20 shows that the lender is Norwich Commercial Group, that's the
21 lender. They have the right to assign the note, and they can
22 also cancel the assignment.

23 MR. SILBER: Without notification of who they assigned
24 it to, Your Honor?

25 THE COURT: If it's properly done. Okay.

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1 The hearing is adjourned. I will enter an appropriate
2 order.

3 The last thing I would say to both of you, I don't
4 know whether you made any effort to try and resolve this matter
5 by settlement. As always, I urge the parties to seek to try
6 and see if they can resolve it. It's going to be expensive for
7 the Trust to have to go forward with an evidentiary hearing.
8 And there's a lot at stake for both sides on that.

9 If we have to go forward -- if I order an evidentiary
10 hearing, we'll go forward with it and we'll deal with it that
11 way. We're adjourned.

12 MR. WISHNEW: Understood, Your Honor.

13 Your Honor, there's one last matter on today's
14 calendar.

15 THE COURT: Okay, sorry.

16 MR. WISHNEW: Sorry. Page 11, IV, the status
17 conference. This deals with a letter we received from Ms.
18 Ailette Cornelius.

19 THE COURT: They're in the back, and they've had to
20 sit here and wait all this time.

21 MR. WISHNEW: Sorry.

22 THE COURT: Come on up. Come on up. I apologize that
23 you've had to wait this long. You've been very patient.

24 MS. CORNELIUS: I'm prepared for the day.

25 THE COURT: Tell me which matter we're looking at now.

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1 MR. WISHNEW: Sure, Your Honor. Under IV on page 11,
2 this was --

3 THE COURT: This is Cornelius.

4 MR. WISHNEW: This is Ms. Cornelius. She had --

5 THE COURT: Are you Ms. Cornelius?

6 MS. CORNELIUS: Yes, sir.

7 THE COURT: Okay.

8 MR. WISHNEW: She had reached out -- we had -- just by
9 way of background, we had put her claim in an omnibus objection
10 back in 2013.

11 THE COURT: Um-hum.

12 MR. WISHNEW: After an initial hearing on it, we came
13 to a consensual resolution with her and fixed the allowed
14 amount of her claim. At this point in time, it's been the
15 Borrower's Trust's understanding that we have a binding
16 settlement agreement with her for a fixed claim against GMAC
17 mortgage.

18 THE COURT: Is it in writing and signed?

19 MR. WISHNEW: It is, Your Honor, yes. And I'm not
20 quite clear what Ms. Cornelius' issue is, but I wanted to make
21 sure she had her day in court --

22 THE COURT: Okay.

23 MR. WISHNEW: -- to address it.

24 THE COURT: All right. So we're talking about claim
25 number 5286. So tell me your position, Ms. Cornelius?

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1 MS. CORNELIUS: Yes, Your Honor. I -- when they
2 called me up about this, I did not understand nothing about it.
3 Mr. Beck, he called me up and he offered me an amount. And he
4 said he would send something. So I got it from my phone, and I
5 signed it, and I sent it back to him. And then afterwards,
6 because nobody explained anything to me, to say how this works,
7 et cetera, I didn't even -- if you notice my claim form there,
8 you'll see that I made -- where they asked me what's my claim,
9 you know, I gave my opinion, not knowing how to respond to it,
10 but I didn't want it to pass me round, and so therefore, I put
11 in the claim argument.

12 Okay, so I was supposed to come to court here, and
13 then a day or two before I was supposed to come here, Mr. Beck
14 called me and he offered me an amount, which is 13,000 dollars.
15 I told him, yes, you know, I'll take it; is there any more that
16 I could get? He said, no, he's offering me the best offer. I
17 said, well, you know, I -- I'm going to sign it, because I
18 didn't want him to say -- I was telling the truth. I was happy
19 to hear him say that --

20 THE COURT: Sure.

21 MS. CORNELIUS: -- you know, that he was offering me
22 something there, because I didn't know the circumstances
23 surrounding the case.

24 But then when I got some mail, I read, and I found out
25 that there was some other things that I could do. I could see

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1 the judge, and the judge could make a determination on how much
2 I am to get.

3 THE COURT: You know, sometimes what happens, Ms.
4 Cornelius, is you don't do as well with the judge, as you do
5 when you resolve it. That's not a threat or anything, I'm
6 just --

7 MS. CORNELIUS: Yeah, I understand; I understand.

8 THE COURT: Understand that, having the matter proceed
9 before the judge, you're always rolling the dice because you
10 may win, you may lose, you may win something, but less than
11 what you resolved by settlement, so I don't know any -- I'll
12 tell you right now, I know nothing about the merits of your
13 claim, okay.

14 MS. CORNELIUS: Oh, you don't know anything?

15 THE COURT: So that is not intended in any way to get
16 you either to do anything, okay. I just want to make clear
17 that --

18 MS. CORNELIUS: I understand.

19 THE COURT: -- you wouldn't be the first person to
20 have turned down a settlement, only to go forward, and wind up
21 with little or nothing. So, but that's --

22 MS. CORNELIUS: That's up to me and counsel.

23 THE COURT: So the issue -- the Trust has to decide
24 and you need to decide; if the Trust believes that it has a
25 binding settlement agreement with you, in writing, signed by

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1 you, they can seek to enforce it and not permit you to have
2 buyer's remorse. I suspect you've heard that term about
3 buyer's remorse. You buy a car and then you're -- and you take
4 home and then you decide I really shouldn't have bought this
5 car. Well, it may be too late.

6 So you and Mr. Wishnew or one of his colleagues need
7 to discuss how this matter is going to proceed. If you want
8 out of the deal and they want to enforce it, they can seek to
9 have a Court determination that it's enforceable, and you can
10 argue why it's not, and I'll have to make a legal determination
11 about that.

12 If you want out, and they agree that you're out, and
13 they're going to object to you -- and they object to your
14 claim, that'll come back before me at another hearing and I'll
15 proceed to decide the matter. So have you decided what you
16 want to do?

17 MS. CORNELIUS: You asking me or him?

18 THE COURT: Yes, I'm asking you.

19 MS. CORNELIUS: Okay, I was just saying that I used to
20 work with the government up there in Connecticut. I worked
21 here first and then I moved to Connecticut.

22 THE COURT: Um-hum.

23 MS. CORNELIUS: And I was out for a while -- a whole
24 long time, and I called GMAC and I tried to get legal
25 moderation --

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1 THE COURT: Modification.

2 MS. CORNELIUS: And --

3 THE COURT: That's what Mr. Silber's been -- he lives
4 in Connecticut too.

5 MS. CORNELIUS: Yes, and they wouldn't give it to me.

6 THE COURT: Okay.

7 MS. CORNELIUS: They said my income wasn't enough at
8 that time to receive it, and so I had to go for months and
9 months and months, until I got my -- one of my little grandson
10 to come stay with me, and his income --

11 THE COURT: Yeah.

12 MS. CORNELIUS: -- kind of made up what I was getting,
13 and it was at that time when they gave that moderation --

14 MR. WISHNEW: Modification.

15 THE COURT: Modification.

16 MS. CORNELIUS: -- modification to me.

17 THE COURT: I -- look --

18 MS. CORNELIUS: And --

19 THE COURT: I don't want to get into the merits of
20 what your claim is now --

21 MS. CORNELIUS: Yes.

22 THE COURT: -- because -- and I don't expect you to
23 tell me right now what your decision is, but you need to decide
24 whether, in effect, you're going to seek to revoke your
25 agreement on the settlement. And if so, if the Trust wants to

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1 seek to enforce it, they'll bring a motion before me, and I'll
2 have to -- you'll have to respond to the motion, and I'll
3 decide.

4 MS. CORNELIUS: So --

5 THE COURT: Ordinarily, I will just --

6 MS. CORNELIUS: Okay.

7 THE COURT: I'm not saying in your case -- ordinarily
8 when two parties are in a dispute, and they sign a written
9 settlement agreement, unless there's been misrepresentations in
10 getting somebody to sign an agreement, it's ordinarily
11 enforceable. I'm not saying yours is or not. I'm not -- I
12 can't give -- I'm not giving you legal advice. I'm not telling
13 what position you ought to take. Think long and hard about
14 it -- not too long -- think about it. Talk to Mr. Wishnew.

15 And Mr. Wishnew, what's the Trust -- does -- do you
16 know what the Trust's position at this point is, as to
17 whether --

18 MR. WISHNEW: At this point we are intending to honor
19 the settlement agreement.

20 THE COURT: Okay.

21 MS. CORNELIUS: I spoke to them several times about
22 it.

23 THE COURT: Okay.

24 MS. CORNELIUS: And they -- they refused to up it a
25 little.

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1 THE COURT: They probably -- no, that's -- I'm not
2 going to get in the middle of it.

3 MS. CORNELIUS: Well, let me say this, Judge.

4 THE COURT: I'm not going to get into the middle of
5 it. Here's what we going to do.

6 MS. CORNELIUS: Okay.

7 THE COURT: I'm going to recess.

8 MR. WISHNEW: Yup.

9 THE COURT: If you want to -- you don't have a lawyer,
10 I take it?

11 MS. CORNELIUS: No, sir.

12 THE COURT: So talk to Mr. Wishnew for a few minutes
13 now. You've got to get this resolved. It sounds to me -- I
14 don't know -- unless the Trust changes it position, that it's
15 going to seek to enforce the written agreement.

16 MS. CORNELIUS: Oh, the Court would seek to enforce
17 it?

18 THE COURT: No, they will seek to enforce it. They'll
19 come before me with a motion to enforce a settlement agreement.
20 Usually where these disputes are, is where there's an oral
21 agreement. Somebody says I did settle; I didn't settle and it
22 wasn't the final agreement. But ordinarily, where there's a
23 written agreement signed by both parties, if the terms are
24 specific and definite --

25 MS. CORNELIUS: I understand, Judge.

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1 THE COURT: Okay. So I'm not -- but I'm not
2 deciding -- I want to make clear: I'm not deciding anything
3 today.

4 MS. CORNELIUS: Okay, sir.

5 THE COURT: You need to talk with Mr. Wishnew and
6 decide how this is going to proceed. If the Trust decides it's
7 going to -- it wants to enforce the agreement, they'll bring
8 the matter before me. You'll have an opportunity to appear.
9 You'll have an opportunity to file anything in opposition.

10 MS. CORNELIUS: So --

11 THE COURT: The law does not support buyer's remorse;
12 let me put it that way.

13 MS. CORNELIUS: They don't support -- you see, I just
14 didn't understand it how to respond to that.

15 THE COURT: I'm not going to -- I don't want to get
16 into the merits.

17 MS. CORNELIUS: So that's the only reason why I --

18 THE COURT: I don't want to get --

19 MS. CORNELIUS: -- signed up -- signed on to that.

20 THE COURT: I don't want to get into the merits of it
21 today, one way or the other.

22 MS. CORNELIUS: Okay, so --

23 THE COURT: So see if you can resolve the matter. If
24 you can't, it'll come before me. You'll have notice of when
25 the hearing is, and you'll have a chance to file -- if they

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1 file a motion to enforce it, and you want to oppose it, you'll
2 file something in writing -- why it should -- why you're
3 opposing it. It'll come before me; I'll have to decide, okay.

4 MS. CORNELIUS: Okay, okay, Judge. Thank you so much.

5 THE COURT: Thank you, again. I apologize --

6 MS. CORNELIUS: Thank you, sir.

7 THE COURT: -- that you were -- you sat here and
8 waited, but you got to see what goes on in this court.

9 MS. CORNELIUS: That's okay; I wanted to see too, so
10 it's okay for me. Thank you.

11 THE COURT: Okay, all right. We're adjourned.

12 MS. CORNELIUS: God bless.

13 MR. WISHNEW: Thank you very much for your time, Your
14 Honor.

15 MR. SILBER: Your Honor, I just want to apologize for
16 my frustration.

17 THE COURT: Mr. Silber --

18 MR. SILBER: And I believe -- you told me to work
19 something out with the clerk as far as my -- one of my loans,
20 FHA or not?

21 THE COURT: No, you --

22 MR. SILBER: You want me to tell the clerk?

23 THE COURT: See if you can --

24 MR. SILBER: Oh, okay, because it's FHA. I have proof
25 here if you want.

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1 THE COURT: Okay, show it to Mr. Wishnew.

2 MR. SILBER: Okay, thank you for your time.

3 THE COURT: All right.

4 MR. SILBER: Again, I apologize.

5 THE COURT: Okay.

6 (Whereupon these proceedings were concluded at 12:34 PM)

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I N D E X

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Wells Fargo will file a statement of applicable law for all Ally accounts within seven days	25	11
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C E R T I F I C A T I O N

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4

I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

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Penina Wolicki

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PENINA WOLICKI

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AAERT Certified Electronic Transcriber CET**D-569

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Date: February 27, 2015

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